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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1939

No. 122

CHICOT COUNTY DRAINAGE DISTRICT,
PETITIONER,

vs.

THE BAXTER STATE BANK AND MRS. LENA S. SHIELDS

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED JUNE 19, 1939.

CERTIORARI GRANTED OCTOBER 9, 1939.

SUPREME COURT OF THE UNITED STATES

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INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., OCTOBER 25, 1939.

—4185

[fol. A] [Caption omitted]

[fol. 1]

IN UNITED STATES DISTRICT COURT FOR THE WESTERN DIVISION OF THE EASTERN DISTRICT OF ARKANSAS

8342

THE BAXTER STATE BANK and MRS. LENA S. SHIELDS,

vs.

CHICOT COUNTY DRAINAGE DISTRICT, Defendants

COMPLAINT-AT-LAW—Filed July 24, 1937

That the plaintiff, The Baxter State Bank, is a corporation organized and doing business under the laws of the State of Kansas; domiciled at Baxter Springs, Kansas; and Lena S. Shields is a resident of Baxter Springs, Kansas; that the defendant is a local improvement district organized under an Act of the General Assembly of Arkansas designated as Special Act 405 of the Extraordinary Session of 1920, approved February 20, 1920, and amended by Act 432 of the General Assembly of 1921 and under the general drainage law of Arkansas approved May 27, 1909 in Chicot County in the Eastern District, Western Division of this Court.

By the terms and under the authority of said Acts of the General Assembly of Arkansas the defendant issued and the plaintiffs purchased for value and before maturity and is the owner of the following bond of defendant district:

STATE OF ARKANSAS, COUNTY OF CHICOT

Chicot County Drainage District

5½% Drainage Bond

Know All Men By These Presents; That Chicot County Drainage District, of the County of Chicot, in the State of [fol. 2] Arkansas, acknowledges itself to owe and for value received, hereby promise to pay to bearer the sum of One Thousand Dollars in gold coin of the United States of America of the present standard of weight and fineness on

the fifteenth day of October, 1936, with interest thereon from the fifteenth day of April, 1924, at the rate of five and one half percentum, payable semi-annually on the fifteenth day of April and October in each year, on presentation and surrender of the annexed interest coupons as they severally mature. Both principal and interest of this bond are hereby made payable at the office of the Liberty Central Trust Company, in the City of St. Louis, State of Missouri.

This bond is one of a series of like tenor and effect except as to maturity, aggregating Eight Hundred and Fifty Thousand Dollars ($850,000.00), numbered from One (1) to eight hundred and Fifty (850) inclusive, issued for the purpose of hastening the work of constructing a system of drainage in said Chicot County Drainage District, under and pursuant to and in full compliance with the Constitution and Laws of the State of Arkansas, including among others, Act Number 405 of the Extraordinary Session of the General Assembly of the State of Arkansas of the year 1920, entitled, "An Act to Create and Establish the Chicot County Drainage District in Chicot County, to Provide for a Board of Commissioners; Assessment of Benefits, Collection of Taxes, Issuance of Bonds, Construction of Drains and Ditches and for Other Purposes," approved February 25, 1920, Act No. 432 of the Acts of said General Assembly of the year 1921, entitled, "An Act to Amend Section 16 of Act No. 405 of the General Assembly of the State of Arkansas, approved February 25, 1920," [approved February 25, 1920",] approved March 25, 1921, and an Act of the General Assembly of the State of Arkansas, of the year 1909, entitled, "An Act to Provide for the Creation of Drainage Districts in this State," approved May 27, 1909, as amended, and under and in full compliance with every provision contained in said acts and with orders, resolutions and proceedings of the County Court of said County and the Board of Commissioners of said Drainage District duly and legally had and adopted. This bond and [fol. 3] attached interest coupons, as well as all other bonds and coupons forming a part of this issue, are payable out of the proceeds of taxes heretofore legally levied upon the real property, public roads, railroads and [tramroads] embraced within said District and benefited by said improvement, and are secured by a prior tax lien on all of said real property, public roads, railroads and tramroads.

The Drainage District hereby covenants that said District is duly and legally existing as a drainage district under the Constitution and Laws of the State of Arkansas; that the real property, public roads, railroads and tramroads within the District have been duly assessed for the making of said improvement as required by law, and said assessment of benefits has been duly pledged and mortgaged for the security of this bond; that all acts, conditions and things required to be done, precedent to and in the issuing of this bond, including the organization of said District, the adjudication of the benefits and damages against the real property, public roads, railroads and tramroads therein and in levying the drainage tax, have been done, have happened and have been performed in regular and due form as required by law; and that the total amount of bonds issued by said District, including this bond, does not exceed the available benefits assessed or the taxes levied and uncollected at the time said bonds are issued, or any statutory or constitutional limitations. For the faithful performance of all covenants, recitals and stipulations herein contained, for the proper application of the proceeds of the taxes heretofore or hereafter levied, and for the faithful performance in apt time and manner of every official act required and necessary to provide for the prompt payment of the principal and interest of this bond, as the same mature, the full faith, credit, assessment of benefits heretofore or hereafter assessed, and all other resources of said Drainage District are hereby irrevocably pledged.

This bond shall not be valid until it shall have been authenticated by the certificate hereon duly signed by the Liberty Central Trust Company, of St. Louis, Missouri.

[fol. 4] In Witness Whereof, Chicot County Drainage District of Chicot County, in the State of Arkansas, has caused this bond to be signed by the members of its Board of Commissioners, attested with its corporate seal and has caused the interest coupons hereunto attached to be executed with the fac-simile signature of the Chairman of its Board of Commissioners on the fifteenth day of April, 1924.

Chicot County Drainage District of Chicot County, Arkansas, by Joe Sloss, R. D. Chotard, C. M. Matthews, C. F. Wilson, Herman Carlton, Commissioners.

That the plaintiffs own the following bonds of defendant district including the above, to-wit:

Bond No.	Maturity	Amount
197	October 15, 1936	$1000.00
207	October 15, 1936	1000.00
299	October 15, 1939	1000.00
312	October 15, 1939	1000.00
402	October 15, 1941	1000.00
587	October 15, 1945	1000.00
588	October 15, 1945	1000.00
589	October 15, 1945	1000.00
590	October 15, 1945	1000.00
591	October 15, 1945	1000.00
825	October 15, 1949	1000.00
826	October 15, 1949	1000.00
827	October 15, 1949	1000.00
834	October 15, 1949	1000.00
		$14000.00

with interest at five and one half percent from October 1932 to date.

That the interest on said bonds were regularly paid from date in April 1924 until October 1932 and the same has remained and been in default since and is past due for more than four years; that the plaintiff has and does hereby exercise its option to declare the entire list of bonds due [fol. 5] and payable; that demand for payment has been made and refused.

Wherefore, plaintiff prays judgment for amount of said bonds with interest as aforesaid.

A. J. Johnson, Its Attorney.

Duly sworn to by A. J. Johnson. Jurat omitted in printing.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

SUMMONS AND MARSHAL'S RETURN—Filed July 28, 1938

The President of the United States of America,

To the Marshal of the Eastern District of Arkansas, Greeting:

You Are Hereby Commanded, That you summon C. M. Matthews, Chairman, N. W. Bunker, Sam Epstein, B. C. [fol. 6] Clark and F. H. Dantzler, Commissioners of Chicot

County Drainage District late of your District, if they may be found therein, so that they be and appear within 20 days after service of this summons before the United States District Court for the Eastern District of Arkansas, at Little Rock next to answer to Complaint of The Baxter State Bank, et al.

And have you then and there this writ.

Witness, the Honorable Thomas C. Trimble, Jr., United States District Judge at Little Rock, Ark., this 24th day of July, A. D. 1937.

Sid B. Redding, Clerk, by Darden Moose, Deputy Clerk. (Seal.)

Received the within writ at Little Rock, Arkansas on July 24, 1937 and executed the same by serving the within C. M. Matthews, Chairman of Chicot County Drainage District, N. W. Bunker, Sam Epstein, B. C. Clark, and F. H. Dantzler, Commissioners of said [Distri*d*t] by copy in person to each at Lake Village, Arkansas, on July 26, 1937.

V. C. Pettie, U. S. Marshal, by J. L. McBurnett, Deputy.

Received 7-24-37 U. S. Marshal's Office, Little Rock, Arkansas.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ANSWER—Filed Sept. 14, 1937

Comes the defendant, Chicot County Drainage District, by its attorneys, Owens, Ehrman & McHaney, and for answer to plaintiff's complaint, states:

Defendant admits that the plaintiff The Baxter State Bank is a corporation organized and doing business under the laws of the State of Kansas; that the plaintiff Lena S. Shields is a resident of the State of Kansas; and that the defendant is a local improvement district organized under [fol. 7] the Acts of the General Assembly of the State of Arkansas, as alleged in plaintiffs' complaint.

Defendant admits that it issued certain bonds, and that among said bonds were the following:

Bond No.	Maturity	Amount
197	October 15, 1936	$1,000.00
207	October 15, 1936	1,000.00
299	October 15, 1939	1,000.00
312	October 15, 1939	1,000.00
402	October 15, 1941	1,000.00
587	October 15, 1945	1,000.00
588	October 15, 1945	1,000.00
589	October 15, 1945	1,000.00
590	October 15, 1945	1,000.00
591	October 15, 1945	1,000.00
825	October 15, 1949	1,000.00
826	October 15, 1949	1,000.00
827	October 15, 1949	1,000.00
834	October 15, 1949	1,000.00
		$14,000.00

Defendant has no knowledge as to the present ownership of said bonds as above mentioned, and, therefore, denies that plaintiffs are the owners thereof.

Further answering, defendant states that on or about the 17th day of June 1935, it filed in the United States District Court for the Western Division of the Eastern District of Arkansas its petition for authority to effect a plan of debt readjustment under and by virtue of the provisions of the Act of July 1, 1938, as amended, and more particularly C. 541, Paragraphs 78, 79, and 80 thereof, as added May 24, 1934, U. S. C. A. Title 11, Paragraphs 301, 302, and 303.

That the plaintiffs in the present action were given notice of the proceedings thereunder and were parties to said suit.

That the Chicot County Drainage District, defendant herein, was declared a bankrupt in said proceeding, it being styled: "In the Matter of Chicot County Drainage District Bankrupt, No. 4357." That on the 28th day of March, 1936, the District Court of the United States for the Western Division of the Eastern District of Arkansas ren- [fol. 8] dered a final decree in said proceeding, copy of which is attached hereto, marked "Exhibit 'A'" and made a part hereof. That under the terms and provisions of said decree, plaintiffs have no valid claim against the defendant herein, and said plaintiffs were, under the terms and provisions of said decree, forever restrained and enjoined from asserting any claim or demand whatsoever against defendant herein, except as provided in said decree.

That no appeal has been prosecuted from said decree, and that time for appeal therefrom has expired, and that therefore plaintiffs are bound by its provisions and cannot prosecute this action. Defendant specifically pleads said aforementioned decree as res adjudicata of the issues involved in this action.

Wherefore, defendant prays that the complaint be dismissed and the defendant be permitted to go hence with its costs.

Grocer T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

EXHIBIT "A" TO ANSWER

Final Decree

In the United States District Court Within and For the Eastern District of Arkansas, Western Division

In the Matter of

The Petition for Debt Readjustment of Chicot County Drainage District

No. 4357. In Bankruptcy

This cause came on before me this day to be heard upon the application of petitioning district for an order finally discharging it from all liability for and decreeing the cancellation and annulment of its outstanding old obligations affected by and refinanced pursuant to its plan of debt [fol. 9] readjustment heretofore approved by this Court, and upon the written report filed with the Clerk of this Court by Joe H. Schneider, the Disbursing Agent heretofore appointed in this cause, and the Court having seen and examined the application and report and the evidence offered in support thereof, and being fully advised in the premises, finds:

(1) That the petition for debt readjustment filed in this cause by the petitioning district and the [acc*p*etance] and approval thereof by holders of more than thirty per centum (30%) of each class of its outstanding indebtedness

were, in all things, in compliance with law and have been duly approved by this Court; and

(2) That the plan of debt readjustment as set forth in the petition filed in this cause was duly accepted and approved by the holders of more than sixty-six and two-thirds per centum (66⅔%) of each class of its outstanding indebtedness affected thereby, was proposed and accepted in good faith, is fair, equitable and just, and does not discriminate unfairly in favor of any class of creditors, and has been duly approved by this Court; and

(3) That in order to raise the funds with which to fully consummate its plan of debt readjustment, the petitioning district, with the approval of this Court, has issued and sold its new serial bonds to the Reconstruction Finance Corporation, an agency of the United States Government, in the principal sum of $193,500.00, all dated July 1, 1935, bearing interest from date until paid at the rate of four per centum (4%) per annum, payable semi-annually, and evidenced by interest coupons thereto attached, the numbers, principal amount and maturity dates thereof being as follows:

No. of Bonds	Denomination	Amount	Maturity
1 to 3, incl.	$1000.00	$3000.00	July 1, 1939
4	500.00	500.00	July 1, 1939
5 to 7, incl.	1000.00	3000.00	July 1, 1940
8	500.00	500.00	July 1, 1940
9 to 11, incl.	1000.00	3000.00	July 1, 1941
12	500.00	500.00	July 1, 1941
13 to 16, incl.	1000.00	4000.00	July 1, 1942
17 to 20, incl.	1000.00	4000.00	July 1, 1943
21 to 24, incl.	1000.00	4000.00	July 1, 1944
[fol. 10]			
25 to 28, incl.	1000.00	4000.00	July 1, 1945
29	500.00	500.00	July 1, 1945
30 to 33, incl.	1000.00	4000.00	July 1, 1946
34	500.00	500.00	July 1, 1946
35 to 38, incl.	1000.00	4000.00	July 1, 1947
39	500.00	500.00	July 1, 1947
40 to 44, incl.	1000.00	5000.00	July 1, 1948
45 to 49, incl.	1000.00	5000.00	July 1, 1949
50 to 54, incl.	1000.00	5000.00	July 1, 1950
55	500.00	500.00	July 1, 1950
56 to 60, incl.	1000.00	5000.00	July 1, 1951
61	500.00	500.00	July 1, 1951
62 to 67, incl.	1000.00	6000.00	July 1, 1952
68 to 73, incl.	1000.00	6000.00	July 1, 1953
74 to 79, incl.	1000.00	6000.00	July 1, 1954
80	500.00	500.00	July 1, 1954
81 to 86, incl.	1000.00	6000.00	July 1, 1955
87	500.00	500.00	July 1, 1955
88 to 93, incl.	1000.00	6000.00	July 1, 1956
94	500.00	500.00	July 1, 1956
95 to 101, incl.	1000.00	7000.00	July 1, 1957

No. of Bonds	Denomination	Amount	Maturity
102 to 108, incl.	1000.00	7000.00	July 1, 1958
109	500.00	500.00	July 1, 1958
110 to 116, incl.	1000.00	7000.00	July 1, 1959
117	500.00	500.00	July 1, 1959
118 to 125, incl.	1000.00	8000.00	July 1, 1960
126 to 133, incl.	1000.00	8000.00	July 1, 1961
134 to 141, incl.	1000.00	8000.00	July 1, 1962
142	500.00	500.00	July 1, 1962
143 to 151, incl.	1000.00	9000.00	July 1, 1963
152 to 160, incl.	1000.00	9000.00	July 1, 1964
161 to 169, incl.	1000.00	9000.00	July 1, 1965
170	500.00	500.00	July 1, 1965
171 to 180, incl.	1000.00	10,000.00	July 1, 1966
181 to 190, incl.	1000.00	10,000.00	July 1, 1967
191	500.00	500.00	July 1, 1967
192 to 201, incl.	1000.00	10,000.00	July 1, 1968
202	500.00	500.00	July 1, 1968
		$193,500.00	

And that so far as these proceedings are concerned, the new bonds are valid and enforceable obligations of the petitioning district; and

(4) That prior to the issuance and sale of the new bonds mentioned last above, the Reconstruction Finance Corporation, with the approval of this Court and in accordance with the plan of debt readjustment, has purchased certain of the outstanding old obligations of the petitioning district, to-wit; bonds of the district in the sum of $705,087.06, [fol. 11] which were later cancelled and delivered to the petitioning district in exchange for its new bonds equal to the amount paid for the old bonds or obligations so purchased, plus four per centum (4%) interest thereon to the date of exchange, and

(5) That from the proceeds received by the petitioning district from the sale of its new bonds to the Reconstruction Finance Corporation, and funds contributed by the petitioning district, the sum of $20,603.10 was turned over to the Honorable Sid B. Redding, Clerk of this Court, as Registrar; and that the Disbursing Agent has filed in this cause his written report fully showing that the Reconstruction Finance Corporation purchased all of the old bonds of the district, other than the sum of $57,449.30 which have not been made available for refinancing as directed by the plan of readjustment and the decree of this court, and a detailed statement of such outstanding obligations is attached thereto; that as none of the outstanding bonds were deposited with him for retirement as directed by the decree, the sum necessary to pay the holders thereof the amount

found to be due, under the plan and decrees of this court, to-wit, the sum of $20,603.10 was deposited with the Honorable Sid B. Redding, Clerk of this Court, for disbursement as provided in the decree and supplemental decree entered February 5, 1936, and the report should be approved and the Disbursing Agent discharged from further duties and liabilities as such; and

(6) That all costs, expenses, fees and other charges properly chargeable to the petitioning district in this cause, have been duly approved and paid.

It is Therefore Ordered, Adjudged and Decreed as follows:

(a) That the official acts of Joe H. Schneider, Disbursing Agent, as set forth and certified to in his report filed in this cause, be and the same are hereby approved and confirmed, and that his duties as Disbursing Agent be terminated and his liabilities thereunder be forever discharged; and

(b) That the sum of $20,603.10 paid into the registry of this Court, be disbursed by the registrar for the purpose [fol. 12] of taking up and retiring and refinancing, in accordance with the plan of debt readjustment approved in this cause, such remaining outstanding old obligations of the petitioning district as are affected by the plan of debt readjustment, and which may be presented to the Registrar for that purpose within the period of one year from the date hereof; that all such obligations so presented and paid for, be forthwith cancelled and returned to the petitioning district by the Registrar; that all such outstanding old obligations of the petitioning district which are not so presented to the Registrar within one year from the date hereof shall thereafter be forever barred from participating in the plan of debt readjustment or in the funds held in the registry of this Court; that upon the expiration of the period of one year from the date hereof, the Clerk of this Court shall forthwith notify the Reconstruction Finance Corporation, by registered letter addressed to it at Washington, D. C., of the amount of funds then remaining in the registry of the Court, and that the same are available for the purchase of new bonds of the petitioning district then held by the Reconstruction Finance Corporation, at par and accrued interest; that any new bonds so purchased shall be forthwith cancelled and returned to the

petitioning district by the Registrar; that any part of such funds which are not used for such purpose within sixty days after the date of the mailing of such notice, shall thereupon be paid by the Registrar of this Court to and used solely by the petitioning district in the payment of its new bonds and interest thereon; and

(c) That all the old bonds and other obligations of the petitioning district affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from other wise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof; and

[fol. 13] (d) That the new or refunding bonds issued and sold by the petitioning district to the Reconstruction Finance Corporation and the collection of the principal and interest thereon, shall not in any wise be adversely affected by these proceedings, or by any order, judgment or decree entered or rendered in this cause; and

(e) That all proceedings necessary for fully effecting the plan of debt readjustment contemplated by this action, except the ministerial duties of the Registrar of this Court as provided herein, have been done and performed in accordance with law, and that all and singular the orders, judgments and decrees heretofore entered and rendered in this cause, be and the same are hereby ratified and confirmed.

Done at Little Rock, Ark., on this the 28 day of March, 1936.

John E. Martineau, Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

DEMURRER TO ANSWER—Filed Sep. 27, 1937

Comes the plaintiffs herein and demurs to the answer of the defendants and for cause states:

Demurrer does not state facts sufficient to constitute a defense to the cause of action.

Wherefore, the plaintiff prays that answer be stricken from the files and for judgment as prayed in the complaint.

A. J. Johnson, Its Attorney.

[File endorsement omitted.]

[fol. 14] IN UNITED STATES DISTRICT COURT

STIPULATION WAIVING JURY—Filed Feb. 24, 1938

It is hereby agreed and stipulated by and between counsel for the plaintiffs and counsel for defendant that this case may be tried before the court without a jury, and a jury trial is hereby waived.

A. J. Johnson, G. W. Hendricks, Attorneys for Plaintiffs. Owens, Ehrman & McHaney, by E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

No. 8342

THE BAXTER STATE BANK and MRS. LENA S. SHIELDS, Plaintiffs

vs.

CHICOT [—] DRAINAGE DISTRICT, Defendant

JUDGMENT—June 2, 1938

On the 17th day of May, 1938, this cause having come on for hearing before the Court sitting as a jury, the jury

having been waived by both parties in open court, and the same having been submitted to the Court upon the complaint of the plaintiffs, the answer of the defendant, the plaintiffs' demurrer to the answer, and the testimony introduced by the plaintiffs and by the defendant, and the records and papers filed with the clerk of this court in a cause styled, "In the Matter of Chicot County Drainage District, Bankrupt, No. 4357", together with the original bonds sued on, and the pledge securing said bonds, and the Court having taken said cause under advisement, upon consideration of the entire record finds that the bonds sued on herein are valid obligations of the district, and that the plaintiffs are entitled to recover against the District for the amount thereof.

The Court further finds that in the proceedings in this court in the cause styled, "In the matter of Chicot County [fol. 15] Drainage District, Bankrupt, No. 4357", this Court never had jurisdiction of the parties plaintiff herein or the subject matter because Act No. 251 of the Seventy-third Congress, approved May 21, 1934, (U. S. C. A. Title 11, Paragraphs 301 to 303, inclusive) was unconstitutional and void, and that the decree of the Court in said cause offered by the defendant district as a defense to this action constitutes no defense and is void.

It is therefore, considered, ordered, and adjudged that the plaintiff, Baxter State Bank, have and recover judgment against the Chicot County Drainage District of Chicot County, Arkansas, in the sum of Fourteen Thousand, Three Hundred Eighty-nine and 80/100 Dollars ($14,389.80) with costs, and that the plaintiff, Lena S. Shields, have and recover against the Chicot County Drainage District of Chicot County, Arkansas, in the sum of Thirty-nine Hundred Twenty-Three and 15/100 Dollars ($3,923.15) with costs, said judgments to draw interest at 5½ per cent from date hereof until paid.

Thomas C. Trimble, United States District Judge.

Endorsed: "Filed June 2, 1938. Sid B. Redding, Clerk."

IN UNITED STATES DISTRICT COURT

ORDER EXTENDING TIME FOR FILING BILL OF EXCEPTIONS—Filed Sept. 1, 1938

On this 1st day of September, 1938, on application of the defendant, Chicot County Drainage District by Owens, Ehrman & McHaney, its attorneys, and for good cause shown, it is ordered that the time for filing the Bill of Exceptions in this cause be and is hereby enlarged and extended to October 1, 1938.

Thomas C. Trimble, United States District Judge.

[File endorsement omitted.]

[fol. 16] IN UNITED STATES DISTRICT COURT

[Title omitted]

Bill of Exceptions—Filed September 27, 1938

Be it remembered that on this the 21st day of January, 1938, this cause coming on to be heard before the Honorable Thomas C. Trimble, Jr., Judge of the court aforesaid sitting as a jury, a stipulation in writing having heretofore been filed waiving trial by jury, the plaintiffs appearing in person and by Mr. Arthur J. Johnson of Star City, Arkansas, and the defendant appearing and being present by Messrs. Owens, Ehrman and McHaney, Mr. E. L. McHaney, Jr., its counsel, and all parties announcing ready for trial, the following proceedings were had:

RILEY BURCHAM, a witness in behalf of the plaintiffs, testified by deposition as follows:

My name is Riley Burcham, and my residence is 243 East Seventeenth Street, Baxter Springs, Kansas. I am assistant cashier of the Baxter State Bank. The Baxter State Bank owns the following bonds of the Chicot County Drainage District of Chicot County, Arkansas:

Number	Date	Amount	Rate	Due	Amt. Due
207	Apr. 15, 1924	$1,000.00	5½%	Oct. 15, 1936	$1283.55
402	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1941	1283.55
587	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1945	1283.55
588	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1945	1283.55
589	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1945	1283.55
590	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1945	1283.55
591	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1945	1283.55
825	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1949	1283.55
826	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1949	1283.55
827	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1949	1283.55
834	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1949	1283.55

The bank acquired these bonds on March 12, 1925, by purchase from Brown-Crummer Company of Wichita, Kansas. These bonds are now in the hands of the Clerk of the United States District Court at Little Rock, Arkansas. Interest has been paid on these bonds to October 15, [fol. 17] 1932. The statement heretofore given of the amount due on the bonds includes interest from that date.

On cross-examination the witness testified as follows:

The Baxter State Bank had notice of a suit filed in the United States District Court for the Western Division of the Eastern District of Arkansas by the Chicot County Drainage District, said cause being styled "In the Matter of Chicot County Drainage District, Bankrupt," it being cause No. 4357 in said court, wherein the district petitioned for authority to effect a plan of debt readjustment, said cause being filed on or about the 1st day of June, 1935.

Mrs. Lena S. Shields testified in behalf of the plaintiffs by deposition as follows:

My name is Lena S. Shields and residence 623 East Ninth Street, Baxter Springs, Kansas.

I am the owner of the following bonds of Chicot County Drainage District of Chicot County, Arkansas:

Number	Date	Amount	Rate	Maturity	Amt. Due
197	Apr. 15, 1924	$1,000.00	5½%	Oct. 15, 1936	$1,283.55
299	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1939	1,283.55
312	Apr. 15, 1924	1,000.00	5½%	Oct. 15, 1929	1,283.55

I acquired these bonds in March, 1933, through the estate of my deceased husband, Scott D. Cannon. These bonds have been delivered to the Clerk of the United States District Court at Little Rock, Arkansas. The statement of the amount due includes interest from October 15, 1932. Interest had already been paid to that date.

On cross-examination, the witness testified as follows:

I had notice of a suit filed in the United States District Court for the Western Division of the Eastern District of Arkansas, by the Chicot County Drainage District, said cause being styled "In the Matter of Chicot County Drainage District, Bankrupt," it being Cause No. 4357 in said court, wherein said district petitioned for authority to effect a plan of debt readjustment, said cause being filed on or about the 1st day of June, 1935.

[fol. 18] The original bonds numbered 207, 402, 587, 588, 589, 590, 591, 825, 826, 827, 834, 197, 299, and 312, were then introduced into the evidence, after which the plaintiffs rested their case.

The defendant thereupon introduced the following evidence:

"Mr. McHaney: It is hereby stipulated by and between counsel for both parties that Mrs. Lena S. Shields and Mrs. Lena S. Cannon are one and the same person."

Mr. Sid B. Redding was thereupon sworn as a witness and testified on behalf of the defendant as follows:

My name is Sid B. Redding. I am Clerk for the United States District Court for the Eastern District of Arkansas, and was serving in that capacity on and after June 17, 1935. I have charge of all the records filed in said court.

On June 17, 1935, a petition to effect a plan of debt readjustment was filed in this court by the Chicot County Drainage District, it being Cause No. 4357 on the docket of said court. (Said petition was thereupon introduced into the evidence as Exhibit No. 1 and is in words and figures as follows:

"Exhibit No. 1

In the United States District Court, Western Division of the Eastern District for the State of Arkansas

In the Matter of

Chicot County Drainage District, Bankrupt

No. ——

Filed 6-17-35. Sid B. Redding, Clerk

Petition for Authority to Effect a Plan of Debt Readjustment

Jun. 4, 1935.

Drainage, Levee and Irrigation Division

To the Honorable John E. Martineau, Judge of the District Court of the United States, Western Division of the Eastern District, State of Arkansas:

[fol. 19] Your petitioner, Chicot Drainage District, of the County of Chicot, State of Arkansas, respectfully requests:

1. That the Petitioner is a drainage district, duly organized and existing as a taxing district pursuant to the laws of the State of Arkansas.

2. That petitioner is a taxing district within the terms and meaning of an act of the Seventy-third Congress, numbered 251, approved May 21, 1934, constituting an amendment to the General Bankruptcy laws of the United States, acts amendatory thereof and supplementary thereto, especially as same covers and relates to debt readjustment of municipalities and taxing districts.

3. That the court named in the caption hereof is the court in whose territorial jurisdiction the Petitioner or the major part thereof is located.

4. That the filing of this petition and commencing of this proceeding has been authorized by proper resolution duly passed and adopted by the Board of Commissioners of the Petitioner on May 20, 1935, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof by reference, and that the fees required by the act of Congress were duly paid by the Petitioner at the time this petition was filed.

5. That Petitioner is insolvent and unable to meet its debts as they mature, and has been insolvent and unable to meet its debts as they have matured for a period of several years last past, and now desires to effect a readjustment of its debts as hereinafter set forth.

6. That for at least five years last past the farming of lands within the Petitioner has been unprofitable on account of the existing agricultural conditions and the general depression, during which time the prevailing market value of the farm products produced within the limits of the Petitioner has been, generally, less than the cost of production, and during which time the installments on said indebtedness, falling due, have been greater than the ability of said lands to produce, or the owners to pay. That by reason thereof the landowners within the limits of the Petitioner have defaulted in the payment of their taxes or tax levies due to the Petitioner. That, by reason of such [fol. 20] defaults and the ever increasing burden of tax delinquencies, the land- within the Petitioner have become unmarketable and their value greatly reduced. That the

Petitioner has made due and proper effort to collect its taxes or tax levies sufficient to pay its indebtedness as the same has matured and thereafter, but has been unable so to do, and that, unless some such plan of debt readjustment as is herein set forth be speedily effected, the burden of taxation against the lands in or under the petitioner will be greater than the value of said lands. That many of the owners live upon their lands in the Petitioner and unless they are given the relief herein contemplated their homes will be confiscated and the fruits of many years of toil will be lost.

7. That a statement of the outstanding claims or liabilities of the Petitioner is hereto attached, marked Exhibit 'B' and made a part hereof by reference, and that no part thereof is owned, held, or controlled by the Petitioner.

8. That a list of the known creditors of the Petitioner, together with their addresses as far as known to the Petitioner, and a description of their respective claims, showing separately those who have accepted the plan of readjustment hereinafter mentioned, together with their separate addresses is hereto attached and marked Exhibit 'C' and made a part hereof by reference. That the Petitioner by filing the said list of such creditors does not admit the validity of their claims of debt. That all of the said claims of creditors against the Petitioner are of a single class, namely, claims payable out of the taxes or tax levies against the lands within the limits of the Petitioner imposed according to law.

9. That a plan for the readjustment of the debts of the Petitioner described in said Exhibit 'B' has been proposed, and is filed and submitted with the petition. That said plan of debt readjustment is set forth in the resolution of the board of commissioners, of the Petitioner, a copy of which said resolution is hereto attached and marked Exhibit 'D' and made a part hereof by reference.

10. That creditors of the Petitioner owning not less than 76% in amount of the bonds and contractual evidences [fol. 21] of indebtedness of the Petitioner affected by the plan of readjustment proposed herein, have accepted in writing the filing of this petition and the plan of debt readjustment set forth therein, and that such written acceptance is hereto attached, marked Exhibit 'F' and made a

part hereof by reference. That the Reconstruction Finance Corporation, an agency of the United States of America, has authorized a loan to the Petitioner in the sum of $191,000 for the purpose of enabling the Petitioner to reduce and refinance its indebtedness, which refinancing is in accord with the plan of debt readjustment of the Petitioner set forth in Exhibit 'D' hereto attached.

11. That the plan of debt readjustment proposed herein contemplates paying, and the Petitioner should be permitted to pay, the reasonable cost of maintaining its system of drainage improvements and for the expenses of operation during the pendency of this proceeding. That no additional expenses are provided for in the carrying out of the plan of debt readjustment herein set forth except the necessary court costs and a reasonable fee to counsel representing Petitioner, such fee to be in such reasonable amount as the court may determine and paid by the Petitioner out of funds on hand.

Wherefore, The Petitioner prays:

(a) That an order be entered approving this petition as properly filed under the act of Congress governing this proceeding and for the giving of notice as therein required; and

(b) That an interlocutory decree be entered making the plan of readjustment proposed herein temporarily operative, if such decree shall appear to be just and proper, and that upon final hearing a final decree be entered putting in full force and effect such plan of readjustment and releasing and discharging the Petitioner from all debts of every nature as contemplated and provided therein; and

[fol. 22] (c) That the court grant such further orders, decrees and relief as may be deemed equitable and necessary in the premises.

Chicot County Drainage District, by Charles M. Matthews, Chairman.

Attest: W. H. Moore, Secretary.

Ohmer C. Burnside, Attorney for Petitioner.

STATE OF ARKANSAS:
County of Chicot, ss:

C. M. Matthews, being first duly sworn, on his oath states that he is the duly elected, qualified and acting chairman

of the Board of Commissioners of the Chicot County Drainage District, a taxing district; that he has been duly and regularly authorized by resolution adopted by the Board of Commissioners of said District to prepare, execute and verify the foregoing petition; that he has read the said petition and knows the contents thereof and that the matter and things therein stated are true of his own knowledge.

Chas. M. Matthews.

Subscribed and sworn to before me this 1st day of June, 1935.

Raymond L. Hudson, Notary Public.

My commission expires 12-1-37.

EXHIBIT "A" TO PETITION

Certified Copy of Resolutions of District Authorizing Filing and Prosecution of Suit in United States District Court.

Resolution

Whereas, In view of the decision of this district to attempt a plan of refinancing of its indebtedness, it becomes necessary to institute proceedings in the United States District Court.

[fol. 23] Now, Therefore, Be It Resolved by the Chicot County Drainage District, at a meeting of its commissioners (all of whom were present and voting in the affirmative on the question of the adoption of this resolution) held at its offices, in the Town of Lake Village, Chicot County, Arkansas, on Monday, May 20, 1935, after due and legal notice, that this district, acting by and through C. M. Matthews, its chairman; W. H. Moore, its secretary, and Ohmer C. Burnside, its attorney, file forthwith and prosecute in the United States District Court, Western Division of the Eastern District, State of Arkansas, its petition, having for its object a readjustment of its indebtedness, in conformity with Act 251 of the 73rd Congress, approved May 21, 1934, constituting an amendment to the General Bankruptcy laws of the United States, acts amendatory thereof and supplementary thereto.

STATE OF ARKANSAS:
County of Chicot, ss:

I, W. H. Moore, hereby certify that I am that secretary of the Chicot County Drainage District and, as such official, am the legal custodian of the records of such district, and that the above and foregoing is a true and correct copy of a resolution duly adopted by said Chicot County Drainage District at a meeting of the commissioners thereof, duly and regularly had and held, at its offices in the Town of Lake Village, Chicot County, Arkansas, on May 20, 1935.

Witness my hand, as secretary of the Chicot County Drainage District, this the 1st day of June, 1935.

W. H. Moore, Secretary." (Seal.)

EXHIBIT "B" TO PETITION

Attached to the petition (Exhibit No. 1 above) was a statement of outstanding claims or liabilities of the petitioner, which was marked Exhibit "B". This statement showed that the outstanding liabilities of the district were serial bonds in the total amount of $762,536.36, all of said bonds being dated April 15, 1924, and bearing interest from date at 5½% per annum, payable semi-annually on April 15 and October 15, and secured by pledge dated April 15, [fol. 24] 1924, recorded in Deed Record Book R-3, page 257, records in the office of the clerk and recorder of Chicot County, Arkansas.

EXHIBIT "C" TO PETITION

Also attached to the said petition (Exhibit No. 1 above) was Exhibit "C", it being a list of known creditors of the petitioner with their addresses, as far as known, and with the description of their respective claims.

Then followed a list of the owners of bonds of the district who had accepted the proposition of settlement offered by the district, together with the addresses of the owners of said bonds. This list showed that the owners of $581,507.34 in principal amount of said bonds had accepted said proposition of settlement. Then followed a list of

of the Court in the Federal Building in the City of Little Rock, State of Arkansas, on the 22nd day of July, 1935, at 10 o'clock A. M. or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment as set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the further purpose of hearing any creditors of the district upon any controvertible matter in connection with the proposed plan of debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of the district as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33 per cent on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the court for details and particulars of the proposed plan of debt readjustment and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two-thirds in amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjustment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This the 21st day of June, 1935.

Chicot County Drainage District, By W. H. Moore, Secretary."

[fol. 38] An order of July 22, 1935, filed in Cause No. 4357, was thereupon introduced in evidence as Exhibit No. 5, and, omitting formal parts, is in words and figures as follows:

"EXHIBIT No. 5

(Order of U. S. District Court as to Filing of Claims, etc.)

Upon this 22nd day of July, 1935, is presented to Honorable John E. Martineau, United States District Judge,

in chambers, in the Federal Building, in Little Rock, Arkansas, in said district, sitting in bankruptcy, the verified petition and exhibits attached thereto of the above styled drainage district, and the proof of publication of the Saint Louis Globe Democrat, of Saint Louis, Missouri, showing that all parties having any interest or claim in this matter are warned to appear on this date at this place and time for the purpose of being heard, and that notices were published in the form, and for the time and in the manner, as heretofore ordered by this court; the affidavit of W. H. Moore, Secretary of said Chicot County Drainage District, showing that all bondholders whose names and addresses are to petitioner known, and appearing in the schedule marked as Exhibit 'F' to the original petition, were prior to July 1, 1935, mailed a notice in form as prescribed in the previous order of this court, notifying such bondholders, at their last known address, of the pendency of this litigation and of hearing on this date; and upon consideration of all of which the court makes the following findings of fact, to-wit:

1. That petitioner is a Drainage District, and, as such, is a taxing district of the State of Arkansas, and was organized and issued bonds pursuant to and in full compliance with the Constitution and laws of the State of Arkansas.

2. That said Drainage District comes within the terms of the 73rd Congress, Act No. 251, approved May 24, 1934, and the petition heretofore filed herein was filed pursuant to the provisions of said Act and the Bankruptcy Act of July 1, 1898, as amended, covering Municipal Debt Readjustments.

3. That the officials having power to contract on behalf of said Drainage District and to provide for levying the [fol. 39] special assessments for the purpose of constructing the improvements for which said drainage district was organized are the members constituting its Board of Commissioners and Directors, and said Board now consists of Chas. M. Matthews, Sam Epstein, B. C. Clark, N. W. Bunker and F. H. Dantzler, all of whom are duly qualified and acting as said Board of Commissioners and Directors of said Drainage District, and that the petition and proceedings had hereunder have been authorized by a proper resolu-

bondholders, together with their addresses and the amount of bonds owned by each, which bondholders had not accepted the proposition of settlement offered by the district. The total amount of the bonds the owners of which had not accepted the proposition of settlement was $181,029.02. Of this amount, the owners of $20,869.58 were unknown. Included in the list who had not accepted the proposition of settlement were the Baxter State Bank, whose address was shown as Baxter Springs, Kansas, and the amount of bonds owned $11,000.00, and Mrs. Lena S. Cannon, whose address was shown in care of Sedgwick Furniture Company, Baxter Springs, Kansas, and the amount owned by her $3,000.00.

Also attached to said petition (Exhibit No. 1 above) was Exhibit "D", which is in words and figures as follows:

EXHIBIT "D" TO PETITION

Certified Copy of Resolution of District Reflecting Plan For Readjustment of Its Debts

Resolution

Whereas, This district, due to poor tax collections, is financially unable to pay its indebtedness, amounting to the sum of $762,536.36, represented by serial bonds of the district, and, of necessity, must attempt some plan of debt readjustment, and

Whereas, This district has for sometime been negotiating with certain of its largest creditors looking toward a set-[fol. 25] tlement of its said indebtedness, such negotiations resulting in the organization of a group of its bondholders in Saint Louis, Missouri, known as the 'Bondholders' Protective Committee of the Chicot County Drainage District,' and

Whereas, Said Bondholders' Protective Committe , after negotiating with the major portion of the bondholders of the district, and acting under written power of attorney from and as agent for approximately 76%, in amount, of the bondholders, has indicated in writing to this district that it has secured the deposit with the Saint Louis Union Trust Company, of Saint Louis, Missouri, as Depository, of bonds in the principal sum of $781,507.34, being approx-

imately 76% of all outstanding bonds of the district, under the express written agreement that such committee, acting as agent and attorney in fact for owners of bonds, so deposited, and as agent and attorney in fact for owners of bonds which may hereafter be deposited with such depository, under such depository agreement, will accept from this district in full and complete payment of all of said bonds now represented by it and all which may hereafter be represented by it such per centum on the dollar of said bonds as the sum of $252,500 bears to the total of said outstanding bonds, to-wit: $762,536.36, or approximately 33%, and

Whereas, This district has proper assurances that it can borrow from the Reconstruction Finance Corporation, of Washington, D. C., the sum of $191,000.00, and has available the sum of $61,500 with which to supplement said loan, aggregating the said sum of $252,500, necessary to meet the requirements of said Bondholders' Protective Committee.

Now, Therefore, Be It Resolved by the Chicot County Drainage District, at a meeting of its commissioners (all of whom were present and voting in the affirmative on the question of the adoption of this resolution) had and held at its offices, in the Town of Lake Village, Chicot County, Arkansas, on Monday, May 20, 1935, after due and legal notice, that this district accept the proposal of the said Bondholders' Protective Committee, to-wit: That this district pay in composition settlement of its said indebted-
[fol. 26] ness the said sum of $252,000, such sum to be raised by securing a loan from the Reconstruction Finance Corporation in the sum of $191,000, under the terms and conditions generally imposed by said corporation, and the payment of the sum of $61,500, raised by this district from other sources, and that such district take appropriate steps to secure said loan from the Reconstruction Finance Corporation, and that such district forthwith file and prosecute its petition in the United States District Court, Western Division of the Eastern District for the State of Arkansas, under Act 251 of the 73rd Congress, approved May 21, 1934, and acts amendatory thereof and supplementary thereto, looking toward a composition settlement of its said indebtedness under the terms and conditions heretofore set forth, and that this district employ Ohmer C. Burnside, of Lake Village, Arkansas, as our attorney to represent us in the above matters, and that he, as our said at-

torney, and C. M. Matthews, as chairman, and W. H. Moore, as secretary, be and they are hereby authorized, empowered and directed to take appropriate steps to forthwith effectuate the accomplishment of said readjustment plan.

STATE OF ARKANSAS:
County of Chicot, ss:

I, W. H. Moore, hereby certify that I am the secretary of the Chicot County Drainage District and that, as such official, am the legal custodian of the records of said drainage district, and that the above and foregoing is a true and correct copy of a resolution duly and legally adopted by the commissioners of said drainage district, at a meeting had and held at its offices, in the Town of Lake Village, Chicot County, Arkansas, on Monday, May 20, 1935.

Witness my hand, as such secretary of the Chicot County Drainage District, this the 1st day of June, 1935.

W. H. Moore, Secretary."

Attached to the petition (Exhibit No. 1) was Exhibit "F", which is in words and figures as follows:

[fol. 27] EXHIBIT "F" TO PETITION

Certificate

I, Wm. R. Humphrey, Secretary of the Bondholders' Protective Committee of Chicot County Drainage District, do hereby certify that the following is a true and correct copy of a resolution adopted by the Bondholders' Protective Committee at a meeting held on May 18th, 1935.

Resolution

Whereas, this Committee has been advised that the Reconstruction Finance Corporation has granted a loan of $191,000 to the Chicot County Drainage District of Chicot County, Arkansas, for the purpose of enabling said District to reduce and refinance its outstanding indebtedness pursuant to provisions of Section 36, Part 4 of the Emergency Farm Mortgage Act of 1933, as amended, which said loan is sufficient to provide for payment of 25.047¢ for each dollar of principal amount of bonds and the interest accrued thereon, and

Whereas, after negotiations with certain landowners in the District, said landowners have agreed to raise the additional sum of $61,500 to be paid to bondholders in cash in addition to the proceeds of the R. F. C. loan,

Now, Therefore, Be It Resolved that this Bondholders' Protective Committee hereby agrees to accept such settlement, consisting of the Reconstruction Finance Corporation loan of 25.047¢ on the dollar plus the sum of $61,500 for all bonds of Chicot County Drainage District, Chicot County, Arkansas, now or hereafter under its control, and

Be It Further Resolved that Wm. R. Humphrey, Secretary of this Committee, be and he is hereby authorized to represent this Committee in all matters, including court proceedings, affecting all or any bonds now or hereafter deposited with this committee.

In witness whereof I have hereunto set my hand this 20th day of May, 1935.

Wm. R. Humprey.

[fol. 28] May 20, 1935.

Wm. R. Humphrey, Secretary,
Bondholders' Protective Committee,
Chicot County Drainage District,
St. Louis, Mo.

Dear Mr. Humphrey:

It is our understanding that you hold authority to represent the Bondholders' Protective Committee holding certain bonds of the Chicot County Drainage District in all matters, including court proceedings, affecting all or any bonds deposited with this committee.

With this understanding, we hereby submit to you the following offer:

The Chicot County Drainage District will pay 25.047¢ on the dollar of principal amount of all outstanding bonds of this District in full and final settlement of same, contingent upon the consummation of a loan to the District by the Reconstruction Finance Corporation in the sum of $191,000, and, in addition, the District will cause to be paid to the

holders of all outstanding bonds the sum of $61,500 cash to be pro rated equally among said bonds.

Kindly advise us whether this offer is acceptable to you.

Very truly yours, Chicot County Drainage District of Chicot County, Arkansas, by Chas. M. Matthews, Chairman.

C. M. Matthews, Chairman,
Board of Commissioners,
Chicot County Drainage District.

DEAR MR. MATTHEWS:

Your offer, set out above, to compromise and settle all outstanding bonds of the Chicot County Drainage District on the basis of 25.047¢ on the dollar of principal amount of bonds, plus the sum of $61,500 to be pro rated equally among said bonds, is hereby accepted on account of all bonds now or hereafter deposited with the Bondholders' [fol. 29] Protective Committee of Chicot County Drainage District.

Very truly yours, Wm. R. Humphirey, Secretary, Bondholders' Protective Committee."

Thereafter, as part of Exhibit "F", followed a schedule showing bondholders who had agreed to accept the proposed settlement, these holders owning $581,507.34 of principal amount of said bonds. Thereafter followed a schedule showing bondholders who had not agreed to accept the proposed settlement, these holders owning bonds in the total amount of $160,159.44, and further showing that there were bonds in the total amount of $20,869.58 unaccounted for. In the list of bondholders who had not agreed to accept the proposed settlement were included Baxter State Bank of Baxter Springs, Kansas, owning $11,000.00 of bonds, and Mrs. Lena S. Cannon, c/o Sedgwick Furniture Company, Baxter Springs, Kansas, the owner of $3,000.00 of bonds. Mr. William R. Humphrey signed an affidavit attached to said schedules, stating that they were true, insofar as could be shown by the records available to him.

There was thereupon introduced as an exhibit to the testimony of Mr. Sid B. Redding Exhibit No. 2, which is in words and figures as follows:

"EXHIBIT No. 2

(Order of U. S. District Court Approving Petition of Chicot County Drainage District for Authority to Readjust and Refinance Its Debts as Properly Filed, Etc.)

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS

Filed June 20, 1935. Sid B. Redding, U. S. Clerk.

In the Matter of the Application of Chicot County Drainage District, A Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts.

No. 4357

This cause coming on this day before me to be heard upon application of the Chicot County Drainage District, [fol. 30] the above named petitioner, for leave to file its petition, schedule and plan for the readjustment of its debts under Section 80, Chapter IX of the National Bankruptcy Act, as amended, and the court having examined the petition and plan of debt readjustment submitted therewith and having heard the oral testimony offered in support thereof, and being fully advised in the premises, finds that the petition and plan of debt readjustment submitted therewith are presented in good faith and for the bona fide purpose of obtaining the relief therein prayed; that creditors of the petitioner holding not less than 76% of its indebtedness affected by the plan have duly accepted it in writing; that the petition and plan are in conformity with Section 80 of Chapter IX of the National Bankruptcy Act, as amended, and it is approved as properly filed.

It Is Therefore Ordered And Adjudged That the petition of the Chicot County Drainage District, a municipal corporation, for authority to readjust and refinance its debts be and the same is hereby approved as properly filed for the purposes therein contained; that the petitioner give by publication notice to its creditors of the filing and approval of the petition, the plan of debt readjustment submitted therewith, and of a formal hearing upon such petition and plan, to be held in the Federal Court Building in the City of Little Rock, and State of Arkansas, on the 22nd day of July, 1935, at 10:00 A. M., and that such no-

tice be published once a week for at least three successive weeks in St. Louis Globe Democrat of St. Louis, Missouri, in the following form:

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS

In the Matter of the Application of Chicot County Drainage District, a Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts.

NOTICE OF HEARING PLAN OF READJUSTMENT

To the Creditors of Chicot County Drainage District:

Notice is hereby given that on the 17th day of June, 1935, the verified petition of Chicot County Drainage District was duly filed in the office of the clerk of the United [fol. 31] States District Court, Western Division of the Eastern District, State of Arkansas, stating, among other things, that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, of Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court take such action under the Act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the chambers of the Judge of the court in the Federal Building, in the City of Little Rock, State of Arkansas, on the 22nd day of July, 1935, at 10:00 o'clock A. M. or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the purpose of hearing any creditor of the district upon any controvertible matter in connection with the proposed plan of debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of the district, as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33% on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the court for details and particulars of the proposed plan of debt readjustment and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two thirds in the amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjust-
[fol. 32] ment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This — day of ——, 1935.

Chicot County Drainage District, by —— ——,
Secretary.

That the secretary of the district mail a copy of such notice to each of the known creditors of petitioner at his last known address; that on or before the date of hearing mentioned in the notice, petitioner shall file with the clerk of this court an affidavit of the publisher showing that the notice was duly published, also an affidavit of the secretary of the district stating that he had duly mailed a copy of the notice to each of the known creditors of petitioner all in accordance with this order.

It Is Further Ordered And Adjudged that at the formal hearing upon the petition held at the time and place set forth in the notice all creditors affected by the plan of debt readjustment may be heard upon the acceptance or rejection of the plan as proposed by the petitioner and may by intervention duly filed in this cause appear and be heard upon any controvertible matter in connection therewith, and the court will at said time determine the merits of the petition, and any and all objections filed thereto, and will fix a reasonable time and manner in which the claims and interests of creditors may be filed; will divide the creditors into classes according to the nature of their respective claims and interests, and cause reasonable notice of

such determinations and of hearings for the consideration of the proposed plans, to be given to creditors.

Ordered and adjudged in chambers at Little Rock, Arkansas, within said district, this the 20th day of June, 1935.

John L. Martineau, Judge."

There was thereupon introduced into the evidence as an exhibit to testimony of Mr. Sid B. Redding the affidavit [fol. 33] of W. H. Moore filed on July 17, 1935, it being Exhibit No. 3, which is in words and figures as follows:

"EXHIBIT No. 3

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS

In the Matter of the Application of Chicot County Drainage District, a Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts

No. 4357

Affidavit

I, W. H. Moore, on oath, state that I am and was at the 20th day of June, 1935, the secretary of the Chicot County Drainage District and, as such official, pursuant to the orders of this court duly made and entered on the 20th day of June, 1935, did mail, with full postage to cover, a notice in the exact form as contained in said order, a copy of which notice is hereto attached and made exhibit 'A' hereto, to each and all of the creditors whose names and addresses appear in the schedule marked as Exhibit 'F' to the original petition herein filed, which said Exhibit 'F' contains a list of all known creditors, with their last known address, who have accepted the plan of debt readjustment as set forth in said original petition, and also a list of all known creditors, with their last known address, who have not accepted said plan of debt readjustment.

Witness my hand and seal on this the 1st day of July, 1935.

W. H. Moore.

Subscribed and sworn to before me this 1st day of July, 1935.

Raymond L. Hudson, Notary Public. (Seal.)

My commission expires December 1, 1937.

[fol. 34] EXHIBIT 'A'

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS

In the Matter of the Application of Chicot County Drainage District, a Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts

Notice of Hearing Plan of Readjustment

To the Creditors of Chicot County Drainage District:

Notice is hereby given, that on the 17th day of June, 1939, the verified petition of Chicot County Drainage District was duly filed in the office of the Clerk of the United States District Court, Western Division of the Eastern District, State of Arkansas, stating, among other things that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court take such action under the Act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the Chambers of the Judge of the Court in the Federal Building in the City of Little Rock, State of Arkansas, on the 22nd Day of July, 1935 at 10:00 O'Clock, A. M. or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment as set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the further purpose of hearing any creditor of the district upon any controvertible matter in connection with the proposed plan of debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of

[fol. 35] the district, as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33 per cent on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the Court for details and particulars of the proposed plan of debt readjustment and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two thirds in amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjustment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This 21st day of June, 1935.

Chicot County Drainage District, By: W. H. Moore, Secretary.

Mailed to creditors on June 22, 1935.

An affidavit of publication filed on July 22, 1935, was thereupon introduced as Exhibit No. 4 to the testimony of Mr. Redding, and is in words and figures as follows:

"Exhibit No. 4

State of Missouri,
City of St. Louis, ss:

Filed 7-22-35. Sid B. Redding, U. S. Clerk.

Personally appeared before the undersigned (A Notary Public within and for the City of St. Louis) H. C. Ganter, who being duly sworn, deposeth and saith that the annexed advertisement was published in the 'St. Louis Globe Democrat' (printed within the said City and State, the newspaper of which he is one of the publishers) for three (3) [fol. 36] times, the first insertion being on the 25th day of

June and the last insertion on the 9th day of July, 1935 as follows:

1st time—June 25
2nd time—July 2
3rd time—July 9
4th time—
5th time—
6th time—
7th time—
etc.

H. C. Ganter.

Sworn to and subscribed before me, this 9th day of July, 1935.

Edward C. Sepp, Notary Public, City of St. Louis.

My commission expires 10-7-38.

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS

In the Matter of the Application of Chicot County Drainage District, A Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of Its Debts

Notice of Hearing Plan of Readjustment

To the Creditors of Chicot County Drainage District:

Notice is hereby given that on the 17th day of June, 1935, the verified petition of Chicot County Drainage District was duly filed in the office of the Clerk of the United States District Court, Western Division, of the Eastern District, State of Arkansas, stating, among other things, that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court [fol. 37] take such action under the act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the Chambers of the Judge

tion duly passed and adopted by said board of commissioners and directors on May 20, 1935.

4. The court named in the caption herein and having jurisdiction of this cause is the court in whose territorial jurisdiction this taxing district is located, and all fees required by said Act of Congress have been duly paid by said Drainage District.

5. That said Drainage District is insolvent and unable to meet its debts as they mature, and it now desires to effect a plan of readjustment of its debts as set out in said petition.

6. A plan of readjustment of the debts of said Drainage District is filed and submitted with the petition, together with the written acceptance of the said Bondholders' Protective Committee purporting to represent creditors of said Drainage District owning not less than 76% in amount of the bonds, notes and certificates of indebtedness of the said Drainage District affected by the said plan, excluding bonds, notes or certificates of indebtedness owned, held or controlled by the said Drainage District in a fund or otherwise.

7. That the petitioner offers to pay to its creditors such percentum on the dollar as the sum of $252,500.00 bears to the sum of $762,536.36, or the approximate sum of 33%, which sum is to be furnished by said drainage district in accordance with the Resolution adopted by the Board of Commissioners thereof, and attached as Exhibit 'D' to said petition, and which provides that said district is to secure a loan from the Reconstruction Finance Corporation of the sum of $191,000.00, and to raise the additional sum of $61,500 from other sources.

[fol. 40] Now, Therefore It is Ordered, Adjudged and Decreed:

1. That all claims against the petitioner herein shall be filed with the Special Master hereinafter appointed in this proceeding on or before the 31st day of August, 1935, at five o'clock in the afternoon, which time the court finds to be a reasonable time within which to allow such claims to be filed, and the said Special Master and the petitioner are directed to publish a notice of the action of this court in fixing such time and manner as presenting claims for at least two insertions of such published notice in Saint Louis

Globe Democrat of St. Louis, Missouri, prior to said expiration date, the proof of publication to be submitted in the form of like notices heretofore published in this proceeding. Such claims shall be in writing and in detail, verified by the oath of the claimant or his attorney, or agent, and shall be supported by the written instrument upon which said claim is based, where such claims are based upon such written instruments. No claim filed subsequent to the said date of 31st day of August, 1935, at five o'clock in the afternoon thereof, shall be considered for any purpose in this cause; provided, that all unpaid bonds issued by petitioner and outstanding shall be considered as filed without formal presentation, but such bonds shall be presented before payment is made thereon as contemplated by the plan of readjustment.

2. That further consideration of said plan of readjustment of debts and all matters necessary of determination before confirmation of said plan of readjustment be, and they are hereby, referred for consideration and report to Joe H. Schneider, Esq., as Special Master. The Special Master may, by order, order to show cause, notice or otherwise, fix the place, date and time for all hearings before him, and reasonable notice of such hearings shall be given to parties in interest and creditors by publication or otherwise, as determined by the Special Master. The Special Master's report shall contain findings upon all matters necessary of determination before confirmation of the plan of readjustment of debts, and shall contain recommendation as to confirmation of the plan of readjustment, together with form of order recommended by the Special Master.

[fol. 41] 3. The Special Master may incur reasonable and necessary expenses in these proceedings, and shall be allowed a reasonable compensation for his services, such reasonable compensation to be hereafter determined and allowed by the court.

4. This court retains jurisdiction of this cause for further orders as may be necessary.

At Little Rock, in said district, this 22nd day of July, 1935.

John E. Martineau, U. S. District Judge."

An affidavit of publication filed August 7, 1935, was thereupon introduced as Exhibit No. 6, and is in words and figures as follows:

"EXHIBIT No. 6

STATE OF MISSOURI,
City of St. Louis, ss:

Filed 8-7-35.

Joe H. Schneider, Referee in Bankruptcy.

Personally appeared before me, the undersigned (a Notary Public within and for the City of St. Louis, H. C. Gonter who being duly sworn, deposeth and saith that annexed advertisement was published in the 'St. Louis Globe-Democrat' (printed within the said City and State, the newspaper of which he is one of the publishers) for two (2) times, the first insertion being on the 25th day of July and the last insertion on the 1st day of August, 1935, as follows:

1st time — July 25
2nd time — August 1
3rd time — ——— —
4th time — ——— —
5th time — ——— —
etc.

H. C. Gonter.

[fol. 42] Sworn to and subscribed before me this 1st day of August, 1935.

Edward Sepp, Notary Public, City of St. Louis.

My commission expires Oct. 7, 1938.

Advertisment

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT FOR THE STATE OF ARKANSAS

In the Matter of The Application of Chicot County Drainage District, A Municipal Corporation, For An Order Authorizing the Readjustment and Settlement of Its Debts

No. 4357

Notice

Notice is hereby given that, under and pursuant to an order of the United States District Court, Western Division

of the Eastern District, for the State of Arkansas, sitting at Little Rock, in said State, made and entered in the above entitled cause on Monday, July 22, 1935, all claims against the Chicot County Drainage District shall be filed with Joe H. Schneider, Esq. (whose address is Federal Building, Little Rock, Arkansas) as Special Master in such case, on or before 5 o'clock in the afternoon of August 31, 1935 and such claims shall be in writing and in detail, verfied by the oath of the claimant or his attorney, or agent, and shall be supported by the written instrument upon which said claim is based, where such claims are based upon such written instruments, and that no claim filed subsequent to said time will be considered for any purpose in such cause, provided, that all unpaid bonds issued by the Chicot County Drainage District and outstanding shall be considered as filed without formal presentation but that such bonds shall be presented before payment is made thereon [fol. 43] as contemplated by the plan of readjustment set forth in the petition filed in said cause.

Chicot County Drainage District, by W. H. Moore, Secretary. Joe H. Schneider, Special Master."

The report of the Special Master to whom cause No. 4357 was referred was thereupon introduced as Exhibit No. 7. This report was filed on the 3rd day of September, 1935, and it was stated that the Special Master had held a hearing on the matter on the 22nd day of July, 1935, and made findings as follows:

EXHIBIT No. 7

1. That the debts of the district consisted of bonds issued and outstanding, together with interest thereon, making a total indebtedness of $857,832.16.

2. That the taxing district was insolvent and unable to meet its debts.

3. That the plan of readjustment of debts offered by the debtor was fair and equitable and for the best interests of the creditors and did [discrimate] unfairly in favor of any class of creditors.

4. That the plan of readjustment of debts complied with the provisions of Section 80, Sub-division (b) of the Bankruptcy Act of 1898, as amended.

5. That the plan of readjustment of debts had been accepted and approved in writing by bondholders comprising 79.01% of the total amount of bonds, unpaid interest coupons, and accrued interest.

6. That all amounts to be paid by the district for expenses incidental to the readjustment of debts had been fully disclosed and were reasonable.

7. That the offer of the plan and its acceptance were in good faith.

8. That the district was authorized by law upon confirmation of the plan to take all action necessary to carry out the plan.

[fol. 44] The report of the Special Master then made the recommendation that the plan of readjustment of debts be confirmed. Further recommendations unnecessary to set out here were also made.

The order and decree of the court on the report of the Special Master entered on the 3rd day of September, 1935, was thereupon introduced in evidence as Exhibit No. 8, and, omitting formal parts, is in words and figures as follows:

"Exhibit No. 8

Order And Decree On Report Of Special Master

This cause came on this day before me to be heard upon report to Joe H. Schneider, Esquire, as Special Master, to whom said cause was referred with directions to consider the plan of readjustment of debts as offered by the debtor, and all matters necessary and pertaining to the readjustment of the indebtedness of the Chicot County Drainage District, together with his recommendations thereon, and the court, being fully advised in the premises, finds that the Special Master has complied with the order of reference herein and made complete report thereof, and the said report should be approved.

The court further finds that the petitioning district is insolvent and unable to meet its debts as they mature, and that the plan of readjustment of debts, as offered by the petitioning district herein, is fair, equitable and for the best interests of its creditors, and does not discriminate unfairly in favor of any class of creditors; that the plan of readjustment of debts complies with the provisions of Section 80, sub-section (b) of the Bankruptcy Act of 1898, as amended, and has been accepted and approved in writing filed in the proceedings by bondholders holding bonds in the principal amount of $602,507.44, which amount is more than 66⅔% of the outstanding bonds of said district; that all amounts to be paid by the taxing district for services or expenses incidental to the readjustment have been fully disclosed and are reasonable; that the offer of the plan and its acceptance are in good fa-th; and that taxing district [fol. 45] is authorized by law, upon confirmation of the plan, to take all action necessary to carry out the plan.

It Is Further Ordered, Adjudged and Decreed that the plan of readjustment of the debts of Chicot County Drainage District be and the same is hereby confirmed.

It Is Further Ordered, Adjudged and Decreed that the petitioner deposit with Joe H. Schneider, Special Master, as the disbursing agent of this court, the sum necessary to pay the holders of outstanding bonds, other than bonds which may be purchased by the Reconstruction Finance Corporation as hereinafter provided, 33.1131 cents on the dollar of the unpaid principal amount thereof, excluding all interest due or to become due, and the holders of said bonds be and they are hereby required to deposit said bonds with all unpaid interest coupons attached with the disbursing agent before payment is made as herein provided. That if said bonds be presented for payment with any unpaid interest coupons missing the disbursing agent shall make a deduction from the amount to be paid on the bonds of an amount equal to the face value of such missing coupons. Such payments to be made on the surrender of the old bonds as provided in the plan of refinancing, and the disbursing agent shall mark such bonds and the coupons thereto attached or accompanying such bonds 'Cancelled'.

That in the event any of the old bonds are not surrendered to the disbursing agent prior to the 1st day of November, 1935, then the proportionate sum to which the holders of such missing bonds may be entitled under the

plan of readjustment and refinancing, shall be paid by the disbursing agent into the registry of this court and thereafter paid by the Registor to the holders of such bonds in accordance with the provisions of this decree and such further decrees of this court as made in reference to the payment of such bonds, provided however, that any money paid into the registry of this court and not claimed on or before the 1st day of November, 1936, shall be offered by said Registor to the Reconstruction Finance Corporation in the purchase for the district of any refunding bonds of said district held by it at a price of par and accrued interest and the balance of said amount not so used for the [fol. 46] purchase of refunding bonds as aforesaid be turned over to the district without further order of court.

That during the pendency of these proceedings, the Reconstruction Finance Corporation is hereby permitted to buy and the holders of such old bonds are permitted to sell to it the outstanding bonds of the district upon the following terms and conditions to-wit: The Reconstruction Finance Corporation to pay the sum of 25.047 cents on each dollar of the unpaid principal of the outstanding bonds, nothing on interest, and the disbursing agent to pay 8.0661 cents on the dollar from the funds deposited by the district for such purposes on the outstanding principal of such bonds, paying nothing on interest, and deducting from said amount for missing coupons as provided for payment of the outstanding bonds by the disbursing agent in this decree. That when purchased as provided in this paragraph, the old bonds shall be delivered to the Reconstruction Finance Corporation and held by it as security for the funds furnished by it for such purchase until such time as the district issue and deliver its refunding bonds to said Reconstruction Finance Corporation for an amount equal to the amount of money paid by it in the purchase of such bonds and interest thereon from date of disbursement at four per centum per annum, or pay such interest and deliver bonds for the principal.

It Is Further Ordered, Adjudged And Decreed that in order to provide for incidental expenses and to provide for money necessary to pay for the outstanding bonds of the district as provided by the plan of readjustment aforesaid and the orders of this court, petitioning district is hereby authorized to issue and sell refunding bonds to the Reconstruction Finance Corporation in amounts required

to pay such incidental expenses and to raise the sum equal to 25.047 cents on the dollars of the principal amount of its outstanding bonds not purchased by the Reconstruction Finance Corporation, and to exchange for bonds purchased by Reconstruction Finance Corporation an amount sufficient to repay said Reconstruction Finance Corporation for the money expended by it for the old bonds of the taxing district and that each and all of said refunding bonds issued [fol. 47] by the petitioning district to the said Reconstruction Finance Corporation, as provided herein, are hereby declared to be valid obligations of such taxing district and shall not at any time be affected by the plan of readjustment of debts.

It Is Further Ordered, Adjudged And Decreed that the clerk of this court shall cause to be published in St. Louis Globe Democrat and Chicot Spectator newspapers published in St. Louis, Missouri, and Lake Village, Arkansas for two successive issues, notice to the holders of the outstanding bonds of the district directing every holder thereof to deposit any and all bonds of petitioning district with the disbursing agent within the time above provided or thereafter with the clerk of this court for payment in accordance with this decree and the plan of readjustment of debts on or before the 1st day of November, 1936, or be forever barred from claiming or asserting as against the said district or any individually owned property therein, or the owners thereof, any claim or lien arising out of said bonds, provided, however, that nothing contained herein shall preclude the Reconstruction Finance Corporation from asserting its rights and claims under the old bonds so purchased by it to the extent or amount so expended in acquiring the same with interest thereon at the rate of four per centum per annum, until said petitioning district shall have delivered to the Reconstruction Finance Corporation its refunding bonds in form satisfactory to said Reconstruction Finance Corporation in the aggregate principal amount equal to the money so expended in acquiring said old bonds.

It Is Further Ordered that the disbursing agent make full and complete report of all receipts and disbursements to this court for confirmation.

That any and all holders of said outstanding bonds of the taxing district be enjoined, pending the entry of said final decree, from attempting the enforcement or collection of any claim, judgment or lien which they may now have

against said district or against any of the lands situated within said taxing district and owned by individuals, either by legal proceedings or otherwise.

[fol. 48] That the costs and expenses of this proceeding, including an allowance to the Special Master, be taxed against the petitioner herein.

Expenses of this proceeding:

Clerical, office, postage, etc	$100.00
Fee to Special Master	500.00
Total	$600.00

Done, Ordered And Decree in Chambers at Little Rock, Arkansas this 3rd day of September, 1935.

John E. Martineau, Judge."

Exhibit No. 9 was thereupon introduced in evidence which which is in words and figures as follows:

"EXHIBIT No. 9

State of Missouri,
City of St. Louis, ss:

Filed 9-12-35. Sid B. Redding, Clerk.

Personally appeared before the undersigned (A Notary Public within and for the City of St. Louis) H. C. Gonter who being duly sworn, deposeth and said that the annexed advertisement was published in the 'St. Louis Globe-Democrat' (printed within the said City and State, the newspaper of which he is one of the publishers) for two (2) times, the first insertion being on the 8th day of September and the last insertion on the 9th day of September, 1935, as follows:

1st time — Sept. 8th
2nd time — Sept. 9th
3rd time — ——— —
4th time — ——— —
5th time — ——— —
etc.

H. C. Gonter.

[fol. 49] Sworn to and subscribed before me, this 9th day of September, 1935.

Edward C. Sepp, Notary Public, City of St. Louis.
My commission expires Oct 7, 1938.

Publication

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

In the Matter of Chicot Drainage District, Debtor

In proceedings for a Plan of Readjustment of Debts

No. 4357

Notice to Bondholders

Notice is hereby given that, under and by virtue of that certain order and decree, made and entered by the United States District Court, Eastern District of Arkansas Western Division, in the above entitled matter, on September 3rd, 1935, any and all holders of the outstanding bonds of the Chicot County Drainage District be and they are hereby directed to deposit such bonds with Joe H Schneider, Esquire (Federal Building, Little Rock, Arkansas) prior to November 1, 1935 or thereafter, until November 1, 1936, with the undersigned as Clerk of said Court, for payment in accordance with the terms of such order and the plan of readjustment of debts as set forth in this proceeding, or be forever barred from claiming or asserting as against said district or any individually-owned property therein, or the owners thereof, any claim or lien arising out of said bonds.

Given under my hand and the seal of this court this 5th day of September, 1935.

Sid B. Redding, Clerk, United States District Court,
Little Rock, Arkansas.

[fol. 50] Exhibit No. 10 was thereupon introduced in evidence, which is in words and figures as follows:

EXHIBIT No. 10

Proof of Publication

A. B [illegible]ry, being duly sworn, deposes and says that he is editor and proprietor of The Chicot Spectator, a weekly newspaper published at Lake Village, Chicot County, Ar-

kansas, and having a bona fide circulation in said County and state, for a period of one year before the date of the publication of this Notice To Bondholders and that the said Notice a true copy of which is hereto annexed and attached, was published in The Chicot Spectator for two (2) consecutive issues, dated as follows, to-wit:

Sept. 13, 1935; Sept. 20, 1935.

(Signed) A. B. Avery.

Subscribed and sworn to before me this 20th day of September 1935.

Dixon T. Gaines, Clerk. By Irene Turpin, D. C.
(Seal.)

Total—$6.00 paid

Publication

IN THE DISTRICT COURT OF THE UNITED STATES, EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION

In the matter of Chicot County Drainage District, debtor:

In proceedings for a plan of readjustment of debts

Number 4357

Notice to Bondholders

Notice is hereby given that, under and by virtue of that certain order and decree, made and entered by the United States District Court, Eastern District of Arkansas, Western Division, in the above entitled matter, on September 3rd, 1935, any and all holders of the outstanding bonds of the Chicot County Drainage District be and they are here- [fol. 51] by directed to deposit such bonds with Joe H. Schneider, Esquire, (Federal Building, Little Rock, Arkansas) prior to November 1, 1935 or thereafter, until November 1, 1936, with the undersigned, as Clerk of said court, for payment in accordance with the terms of such order and the plan of readjustment of debts as set forth in this proceeding, or be forever barred from claiming or asserting as against said district or any individually owned property therein, or the owners thereof, any claim or lien arising out of said bonds.

Given under my hand and the seal of said court, this 5th day of September, 1935.

Sid B. Redding, Clerk, United States District Court, Little Rock, Arkansas. (Seal.)

O. C. Burnside, Atty. for Petition.
September 13-20"

Exhibit No. 12, being a supplemental decree of the United States District Court entered on the 5th day of February, 1936, was thereupon introduced in evidence and, omitting formal parts, is in words and figures as follows:

EXHIBIT No. 12

Supplemental Decree

This cause came on this day before me to be heard on application of the petitioning district for a supplemental decree permitting it to pay each of its bondholders semi-annual interest due April 15, 1933, amounting to $27.50 on each $1000 bond, and $7.97 interest on the unpaid balance of $289.86 on bonds which matured on October 15, 1932; in addition to the sum of 33.1131¢ on the dollar of the principal amount of its outstanding indebtedness as provided in the decree of this court, dated the 3rd day of September, 1935, and the court finds that it was the intention of the district to pay its outstanding bondholders the sum of 33.1131¢ on the dollar of the principal amount of its outstanding bonds and in addition thereto to pay interest as aforesaid; that, in fact, the district has paid interest as aforesaid on the bonds purchased by the Reconstruction Fi- [fol. 52] nance Corporation, and not deposited in court, and, through inadvertence in the entry of the decree, provision for the payment of such interest on the remainder of said bonds was not provided for and that the plan of debt readjustment should be modified and the decree should be amended to permit such interest payments to be made.

It Is Therefore Ordered, Adjudged and Decreed that the decree entered herein on the 3rd day of September, 1935, providing for the payment of the sum of 33.1131¢ on the dollar of the principal sum of the outstanding bonds of the district, be and the same is hereby amended to include an additional payment of $27.50 for each appurtenant coupon maturing April 15, 1933, or the payment of

$7.97 as interest on each bond showing $289.86 as unpaid principal, and that the plan of debt readjustment be and the same is hereby accordingly modified; that the district is hereby directed to deposit with the clerk of this court the sum of $1579.86, an amount sufficient to pay the interest as aforesaid, and that such clerk be and he is hereby directed to pay the interest as aforesaid, less his fee for disbursing same, and, upon such payment, shall cancel such appurtenant coupons maturing April 15, 1933, and shall make appropriate endorsement showing such interest payment of $7.97 on each of the bonds having an unpaid balance of $289.86, as the case may be, and deliver same to the district as provided in the former decree.

Done, Ordered and Decreed at Chambers, in the City of Little Rock, Arkansas, this 5th day of February, 1936.

John E. Martineau, Judge.

The final report of Joe H. Schneider, Special Master and Disbursing Agent, filed with the Clerk of the Court on the 21st day of February, 1936, was thereupon introduced as Exhibit No. 13. Said report stated that pursuant to the decree of the court on September 3, 1935, the Reconstruction Finance Corporation purchased bonds of the district in the amount of $705,087.06 on November 26, 1935, which bonds were on said date cancelled and delivered to the district. That there remained outstanding old bonds of the district in the amount of $57,449.30. That the Chicot County [fol. 53] Drainage District has deposited with Sid B. Redding as registrar the sum of $19,023.24, it being an amount sufficient to pay 33.1131¢ on the dollar of the unpaid principal amount of said outstanding bonds, and that it had also deposited with the registrar the sum of $1,579.86 with which to pay interest on said bonds as provided in the supplemental order of the court entered on the 5th day of February, 1936. That the district had issues, sold, and delivered to the Reconstruction Finance Corporation its 4% refunding bonds in the principal sum of $193,500.00, all dated July 1, 1935, and that all fees and expenses as master and disbursing agent had been paid.

Exhibit No. 14, it being the final decree of the United States District Court in Cause No. 4357, entered on the

28th day of March, 1936, was thereupon introduced in evidence, and, omitting formal parts, is in words and figures as follows:

EXHIBIT No. 14

Final Decree

This cause came on before me this day to be heard upon the application of petitioning district for an order finally discharging it from all liability for and decreeing the cancellation and annulment of its outstanding old obligations affected by and refinanced pursuant to its plan of debt readjustment heretofore approved by this Court, and upon the written report filed with the Clerk of this Court by Joe H. Schneider, the Disbursing Agent heretofore appointed in this cause, and the Court having seen and examined the application and report and the evidence offered in support thereof, and being fully advised in the premises, finds:

(1) That the petition for debt readjustment filed in this cause by the petitioning district and the acceptance and aproval thereof by holders of more than thirty per centum (30%) of each class of its outstanding indebtedness were, in all things, in compliance with law and have been duly approved by this Court; and

(2) That the plan of debt readjustment as set forth in the petition filed in this cause was duly accepted and approved by the holders of more than sixty-six and two-thirds per [fol. 54] centum (66⅔%) of each class of its outstanding indebtedness affected thereby, was proposed and accepted in good faith, is fair, equitable and just, and does not discriminate unfairly in favor of any class of creditors, and has been duly approved by this Court; and

(3) That in order to raise the funds with which to fully consummate its plan of debt readjustment, the petitioning district, with the approval of this Court, has issued and sold its new serial bonds to the Reconstruction Finance Corporation, an agency of the United States Government, in the principal sum of $193,500.00, all dated July 1, 1935, bearing interest from date until paid at the rate of four percentum (4%) per annum, payable semi-annually, and evidenced by interest coupons thereto attached, the num-

bers, principal amount and maturity dates thereof being as follows:

No. of Bonds	Denomination	Amount	Maturity
1 to 3, incl.	$1000.00	$3000.00	July 1, 1939
4	500.00	500.00	July 1, 1939
5 to 7, incl.	1000.00	3000.00	July 1, 1940
8	500.00	500.00	July 1, 1940
9 to 11, incl.	1000.00	3000.00	July 1, 1941
12	500.00	500.00	July 1, 1941
13 to 16, incl.	1000.00	4000.00	July 1, 1942
17 to 20, incl.	1000.00	4000.00	July 1, 1943
21 to 24, incl.	1000.00	4000.00	July 1, 1944
25 to 28, incl.	1000.00	4000.00	July 1, 1945
29	500.00	500.00	July 1, 1945
30 to 33, incl.	1000.00	4000.00	July 1, 1945
34	500.00	500.00	July 1, 1946
35 to 38, incl.	1000.00	4000.00	July 1, 1947
39	500.00	500.00	July 1, 1947
40 to 44, incl.	1000.00	5000.00	July 1, 1948
45 to 49, incl.	1000.00	5000.00	July 1, 1949
50 to 54, incl.	1000.00	5000.00	July 1, 1950
55	500.00	500.00	July 1, 1950
56 to 60, incl.	1000.00	5000.00	July 1, 1951
61	500.00	500.00	July 1, 1951
62 to 67, incl.	1000.00	6000.00	July 1, 1952
68 to 73, incl.	1000.00	6000.00	July 1, 1953
74 to 79, incl.	1000.00	6000.00	July 1, 1954
80	500.00	500.00	July 1, 1954
81 to 86, incl.	1000.00	6000.00	July 1, 1955
87	500.00	500.00	July 1, 1955
88 to 93, incl.	1000.00	6000.00	July 1, 1956
94	500.00	500.00	July 1, 1956
95 to 101, incl.	1000.00	7000.00	July 1, 1957
[fol. 55]			
102 to 108, incl.	1000.00	7000.00	July 1, 1958
109	500.00	500.00	July 1, 1958
110 to 116, incl.	1000.00	7000.00	July 1, 1959
117	500.00	500.00	July 1, 1959
118 to 125, incl.	1000.00	8000.00	July 1, 1960
126 to 133, incl.	1000.00	8000.00	July 1, 1961
134 to 141, incl.	1000.00	8000.00	July 1, 1962
142	500.00	500.00	July 1, 1962
143 to 151, incl.	1000.00	9000.00	July 1, 1963
152 to 160, incl.	1000.00	9000.00	July 1, 1964
161 to 169, incl.	1000.00	9000.00	July 1, 1965
170	500.00	500.00	July 1, 1965
171 to 180, incl.	1000.00	10,000.00	July 1, 1966
181 to 190, incl.	1000.00	10,000.00	July 1, 1967
191	500.00	500.00	July 1, 1967
192 to 201, incl.	1000.00	10,000.00	July 1, 1968
202	500.00	500.00	July 1, 1968
		$193,500.00	

And that so far as these proceedings are concerned, the new bonds are valid and enforceable obligations of the petitioning district; and

(4) That prior to the issuance and sale of the new bonds mentioned last above, the Reconstruction Finance Corporation, with the approval of this Court and in accordance

with the plan of debt readjustment, has purchased certain of the outstanding old obligations of the petitioning district, to-wit; bonds of the district in the sum of $705,-087.06, which were later cancelled and delivered to the petitioning district in exchange for its new bonds equal to the amount paid for the old bonds or obligations so purchased, plus four per centum (4%) interest thereon to the date of exchange, and

(5) That from the proceeds received by the petitioning district from the sale of its new bonds to the Reconstruction Finance Corporation, and funds contributed by the petitioning district, the sum of $20,603.10 was turned over to the Honorable Sid B. Redding, Clerk of this Court, as Registrar; and that the Disbursing Agent has filed in this cause his written report fully showing that the Reconstruction Finance Corporation purchased all of the old bonds of the district, other than the sum of $57,449.30 which have not been made available for refinancing as directed by the plan of readjustment and the decree of this court, and a [fol. 56] detailed statement of such outstanding obligations is attached thereto; that as none of the outstanding bonds were deposited with him for retirement as directed by the decree, the sum necessary to pay the holders thereof the amounts found to be due, under the plan and decrees of this court, to-wit, the sum of $20,603.10 was deposited with the Honorable Sid B. Redding, Clerk of this Court, for disbursement as provided in the decree and supplemental decree entered February 5, 1936, and the report should be approved and the Disbursing Agent discharged from further duties and liabilities as such; and

(6) That all costs, expenses, fees and other charges properly chargeable to the petitioning district in this cause, have ben duly approved and paid.

It Is Therefore Ordered, Adjudged and Decreed as follows:

(a) That the official acts of Joe H. Schneider, Disbursing Agent, as set forth and certified to in his report filed in this cause, be and the same are hereby approved and confirmed, and that his duties as Disbursing Agent be terminated and his liabilities thereunder be forever discharged; and

(b) That the sum of $20,603.10 paid into the registry of this Court, be disbursed by the Registrar for the pur-

pose of taking up and retiring and refinancing, in accordance with the plan of debt readjustment approved in this cause, such remaining outstanding old obligations of the petitioning district as are affected by the plan of debt readjustment, and which may be presented to the Registrar for that purpose within the period of one year from the date hereof; that all such obligations so presented and paid for, be forthwith cancelled and returned to the petitioning district by the Registrar; that all such outstanding old obligations of the petitioning district which are not so presented to the Registrar within one year from the date hereof shall thereafter be forever barred from participating in the plan of debt readjustment or in the funds held in the Registry of this Court; that upon the expiration of the period of one year from the date hereof, the Clerk of this Court shall forthwith notify the Recon- [fol. 57] struction Finance Corporation, by registered letter addressed to it at Washington, D. C. of the amount of funds then remaining in the registry of the Court, and that the same are available for the purchase of new bonds of the petitioning district then held by the Reconstruction Finance Corporation, at par and accrued interest; that any new bonds so purchased shall be forthwith cancelled and returned to the petitioning district by the Registrar; that any part of such funds which are not used for such purpose within sixty days after the date of the mailing of such notice, shall thereupon be paid by the Registrar of this Court to and used solely by the petitioning district in the payment of its new bonds and interest thereon; and

(c) That all the old bonds and other obligations of the petitioning district affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof; and

(d) That the new or refunding bonds issued and sold by the petitioning district to the Reconstruction Finance Corporation and the collection of the principal and interest

thereon, shall not in any wise be adversely affected by these proceedings, or by any order, judgment or decree entered or rendered in this cause; and

(e) That all proceedings necessary for fully effecting the plan of debt readjustment contemplated by this action, except the ministerial duties of the Registrar of this Court as provided herein, have been done and performed in accordance with law, and that all and singular the orders, judgments and decrees heretofore entered and rendered in this cause, be and the same are hereby ratified and confirmed.

[fol. 58] Done at Little Rock, Ark., on this the 28 day of March, 1936.

John E. Martineau, Judge."

Louise Allen, a witness on behalf of the defendant, testified as follows:

I am a deputy clerk in the office of the United States District Clerk at Little Rock, Arkansas, and as such deputy I have charge of the funds deposited in the registry of the clerk's office. There was deposited in that office the sum of $20,603.10 to the account of Chicot County Drainage District for payment of bonds issued by said district and dated April 15, 1924. The clerk's office was instructed to make disbursements of this money under the court order signed by Judge Martineau on March 28, 1936. $44,000.00 of bonds have been surrendered to the clerk's office for payment in accordance with that order. We have paid every bond that was tendered.

W. H. Moore, a witness on behalf of the defendant, testified as follows:

I am secretary of the Chicot County Drainage District and have been secretary since 1932, I believe. I was acting in that capacity during all of the time during which the proceedings for readjustment of the indebtedness of the district were carried on in this court in 1935 and 1936. In accordance with the orders of the District Court during the refunding proceedings, I mailed notices to all of the

bondholders whose addresses were known at the time the petition was filed in June, 1935. This notice was mailed on June 22, 1935. (A copy of said notice was thereupon introduced as Exhibit No. 15 and is in words and figures as follows:)

"EXHIBIT No. 15

IN THE UNITED STATES DISTRICT COURT, WESTERN DIVISION OF THE EASTERN DISTRICT, FOR THE STATE OF ARKANSAS

In the Matter of the Application of Chicot County Drainage District, a Municipal Corporation, for an Order Authorizing the Readjustment and Settlement of its Debts.

[fol. 59] Notice of Hearing Plan of Readjustment

To the Creditors of Chicot County Drainage District:

Notice is Hereby Given, that on the 17th day of June, 1935, the verified petition of Chicot County Drainage District was duly filed in the office of the clerk of the United States District Court, Western Division of the Eastern District, State of Arkansas, stating, among other things, that the district is insolvent and unable to meet its debts as they mature; and that it desires to effect a plan of debt readjustment whereby its bonded and other outstanding indebtedness will be reduced and refinanced pursuant to the provisions of Section 80, of Chapter IX, of the National Bankruptcy Act, as amended, and praying that the court take such action under the Act mentioned as is necessary to fully effect such debt readjustment. That the petition of the district and the proceedings for debt readjustment as set forth therein was approved by the court as properly filed under the Bankruptcy Act and is now pending therein. That by order of the court duly entered in this cause a hearing will be held in the chambers of the Judge of the Court in the Federal Building in the City of Little Rock, State of Arkansas, on the 22nd day of July, 1935, at 10:00 o'clock, A. M., or as soon thereafter as same may be held, for the purpose of considering the plan of readjustment as set out or referred to in the petition as well as any changes or modifications thereof which may be proposed or decreed necessary or proper, and for the further purpose of hearing any creditor of the district upon any controvertible matter in connection with the proposed plan of

debt readjustment and the advisability of entering an order confirming same.

The plan of debt readjustment materially affects the holders of all outstanding bonds and other indebtedness of the district, as it will, if put into effect, require the holders of such indebtedness to receive in cash approximately 33 per cent on the dollar of their indebtedness.

Creditors of the district are hereby referred to the petition on file in the above entitled cause and to the exhibits attached thereto and the orders of the court for details and particulars of the proposed plan of debt readjustment [fol. 60] and of the proceedings taken and to be taken therein.

The proposed plan of debt readjustment has been approved by the district and duly accepted by the holders of more than two thirds in amount of each class of the indebtedness of said district affected by such plan, and upon the approval or confirmation of the plan of readjustment by the court, the district is empowered and authorized to take such action as is necessary to carry the same into effect.

This 21st day of June, 1935.

Chicot County Drainage District, By
Secretary."

I mailed a copy of this notice to the Baxter State Bank and I also mailed a copy of this notice to Mrs. Lena S. Cannon. These notices were mailed on June 22, 1935.

I am the county clerk of Chicot County, Arkansas, and as such I have custody of the papers filed in the County Court. I have here an order of the County Court dated November 11, 1935, fixing a tax levy in Chicot County Drainage District and approving the refinancing of the indebtedness. (Thereupon was introduced as Exhibit No. 16 a certified copy of the order of the County Court of Chicot County above referred to, which is in words and figures as follows:)

"Exhibit No. 16

In the Matter of Chicot County Drainage District of Chicot County, Arkansas

Now, on this 11 day of November, 1935, this matter coming on to be heard upon the application of the Commis-

sioners of Chicot County Drainage District of Chicot County, Arkansas, appearing by their attorney, Ohmer C. Burnside, and the Court being fully advised in the premises and upon the evidence presented finds:

That, by resolution of the 11th day of January, 1934, Reconstruction Finance Corporation authorized a loan in [fol. 61] the total sum of not to exceed $193,500 to or for the benefit of the District, for the purpose of enabling the District to reduce and refinance its outstanding indebtedness.

That, in order to reduce and refinance its outstanding indebtedness, it will be necessary for the District to issue refunding bonds in the total principal amount of One Hundred Ninety-three Thousand Five Hundred Dollars ($193,500.00).

That the total assessment of benefits upon the real property, including lands, railroads and tramroads within said district, amount in the aggregate to the sum of $2,095,304.29.

That, by agreement with Reconstruction Finance Corporation and in consideration of the loan to the District, the District has agreed that, in addition to the collection annually of sums sufficient to service the bonds and provide for the adequate maintenance and operation of the District's project, it will collect amounts sufficient to set up during the five years of this loan, and thereafter maintain, a reserve equal to the amount of the annual installment of principal and interest due on the refunding bonds during the sixth year.

That in order to service the loan, it will be necessary that an order be entered providing that there shall be collected from the assessment of benefits heretofore levied upon the real property, including lands, railroads and tramroads within said District, and declared to be benefited by such improvements, a tax, which, together with ten per centum (10%) for unforseen contingencies, will amount to the sum of Two Hundred Twelve Thousand Eight Hundred Fifty Dollars ($212,850.00) plus, in addition thereto, such further sums as shall be required from time to time by reason of the failure of any of the landowners in said District to pay said assessments as and when the same fall due, with interest on such sums at the rate of six per centum (6%), and such further amounts as shall be required to provide for the adequate maintenance and operation of the District's project.

That said tax should be divided, as required by law, into annual installments and that there should be collected [fol. 62] in each of the years 1935 to 1967, inclusive, a tax of one and one-half per cent (1½%) of the assessed benefits for the purpose of paying the principal and interest of said refunding bonds and building up the reserve aforesaid, and a further tax of one-half of one per centum per annum for maintenance and expenses; said collections to be credited first upon the interest accruing upon said levy and said levy to be in lieu of all previous levies for the respective years. The total levy for each of the years 1935 to 1967, inclusive, should be carried on the tax books as a levy of two per centum per annum; all to be applied as above set forth.

That the Commissioners of said District should be authorized and ordered to secure said refunding bonds by a pledge and mortgage of the revenues of said District.

It is, therefore, considered, ordered and adjudged that the Commissioners of Chicot County Drainage District of Chicot County, Arkansas, be and are hereby authorized and ordered to issue refunding bonds of the District in the total sum of One Hundred Ninety-three Thousand Five Hundred Dollars ($193,500.00) and to secure the same by a pledge and mortgage of the revenues of the District, said bonds to be dated as of July 1, 1935, and to bear interest at the rate of four per centum (4%) per annum, payable semi-annually on the first day of January and July in each year, the principal of said bonds to mature as follows:

No. of Bonds	Denomination	Amount	Maturity
1 to 3, incl.	$1000.00	$3000.00	July 1, 1939
4	500.00	500.00	July 1, 1939
5 to 7, incl.	1000.00	3000.00	July 1, 1940
8	500.00	500.00	July 1, 1940
9 to 11, incl.	1000.00	3000.00	July 1, 1941
12	500.00	500.00	July 1, 1941
13 to 16, incl.	1000.00	4000.00	July 1, 1942
17 to 20, incl.	1000.00	4000.00	July 1, 1943
21 to 24, incl.	1000.00	4000.00	July 1, 1944
24 to 28, incl.	1000.00	4000.00	July 1, 1945
29	500.00	500.00	July 1, 1945
30 to 33, incl.	1000.00	4000.00	July 1, 1946
34	500.00	500.00	July 1, 1946
35 to 38, incl.	1000.00	4000.00	July 1, 1947
39	500.00	500.00	July 1, 1947
40 to 44, incl.	1000.00	5000.00	July 1, 1948
45 to 49, incl.	1000.00	5000.00	July 1, 1949
[fol. 63]			
50 to 54, incl.	1000.00	5000.00	July 1, 1950
55	500.00	500.00	July 1, 1950
56 to 60, incl.	1000.00	5000.00	July 1, 1951
61	500.00	500.00	July 1, 1951
62 to 67, incl.	1000.00	6000.00	July 1, 1952

No. of Bonds	Denomination	Amount	Maturity
68 to 73, incl.	$1000.00	$6000.00	July 1, 1953
74 to 79, incl.	1000.00	6000.00	July 1, 1954
80	500.00	500.00	July 1, 1954
81 to 86, incl.	1000.00	6000.00	July 1, 1955
87	500.00	500.00	July 1, 1955
88 to 93, incl.	1000.00	6000.00	July 1, 1956
94	500.00	500.00	July 1, 1956
95 to 101, incl.	1000.00	7000.00	July 1, 1957
102 to 108, incl.	1000.00	7000.00	July 1, 1958
109	500.00	500.00	July 1, 1958
110 to 116, incl.	1000.00	7000.00	July 1, 1959
117	500.00	500.00	July 1, 1959
118 to 125, incl.	1000.00	8000.00	July 1, 1960
126 to 133, incl.	1000.00	8000.00	July 1, 1961
134 to 141, incl.	1000.00	8000.00	July 1, 1962
142	500.00	500.00	July 1, 1962
143 to 151, incl.	1000.00	9000.00	July 1, 1963
152 to 160, incl.	1000.00	9000.00	July 1, 1964
161 to 169, incl.	1000.00	9000.00	July 1, 1965
170	500.00	500.00	July 1, 1965
171 to 180, incl.	1000.00	10,000.00	July 1, 1966
181 to 190, incl.	1000.00	10,000.00	July 1, 1967
191	500.00	500.00	July 1, 1967
192 to 201, incl.	1000.00	10,000.00	July 1, 1968
202	500.00	500.00	July 1, 1968
		$193,500.00	

It is further considered, ordered and adjudged that there be collected from the assessments of benefits upon the real property, including lands, railroads and tramroads within said District, and declared to be benefited by the District's improvements, for the purpose of servicing said bonds, an amount which, together with ten per centum (10%) for unforeseen contingencies, will amount to the total sum of Two Hundred Twelve Thousand Eight Hundred Fifty Dollars ($212,850.00), plus such further sums as shall be required from time to time by reason of the failure of any of the landowners in said District to pay said assessments as and when the same fall due, with interest on such sums at the rate of six per centum (6%) per annum, and such further amounts as shall be required to provide for the adequate maintenance and operation of the District's project.

[fol. 64] It is further considered, ordered and adjudged that said tax be divided, as is required by law, into annual installments and that there be collected in each of the years 1935 to 1967, inclusive, a tax of one and one-half per cent (1½%) of the assessed benefits for the purpose of paying the principal and interest of said refunding bonds and building up the reserve aforesaid, and a further tax of one-half of one per centum per annum for maintenance and expenses. The said tax shall be paid by the real property in the District, including lands, railroads and tram roads in

said District, in proportion to the amount of the assessments of benefits thereon.

It is further considered, ordered and adjudged that the said tax hereinbefore assessed shall be collected at the rate of Two per centum (2%) for each of the years 1935 to 1967, inclusive; said collections to be credited first upon the first accruing upon said levy, and said levy to be in lieu of all previous levies for the respective years.

It is further considered, ordered and adjudged that to meet the interest upon the said bonds and to pay the principal thereof as it matures, there is hereby appropriated for that purpose and set aside out of the first moneys received from the collection of each installment of the said tax assessed against the real property, including lands, railroads and tramroads within the said drainage district, a sum sufficient to pay the interest and principal of the bond issue maturing the year in which that installment of said tax is due and payable in accordance with and as shown in the schedule hereinbefore set out, and also to build up the reserve provided for in the agreement between said District and Reconstruction Finance Corporation.

It is further considered, ordered and adjudged that no part of the funds arising from the collection of the two per centum in 1935 to 1967, inclusive, of said assessment of benefits in each year shall be applied or used for any purpose save the payment of principal and interest of the refunding bonds herein provided for and the building up of said reserve.

If the tax herein levied should prove insufficient to pay the refunding bonds hereinbefore referred to and the interest thereon as they mature, and also to build up the re-
[fol. 65] serve required by the agreement between said District and Reconstruction Finance Corporation, then this Court pledges itself to make such additional levies of taxes against the said assessments of benefits as may be necessary for the purposes aforesaid.

This order shall supersede all previous orders levying a tax upon the lands, railroads and tramroads in said District.

——— ———, County Judge of Chicot County, Arkansas.

STATE OF ARKANSAS,
County of Chicot, ss.:

I, Henry Moore, County Clerk of Chicot County, do hereby certify that the above and foregoing is a true and cor-

rect copy of the order filed in my office, at Lake Village, Arkansas.

Witness my hand and official seal this 19th day of January, 1938.

Henry Moore, County Clerk, (Seal.)"

Without objection, a certified copy of the pledge and mortgage securing the bond issue of July 1, 1935, was thereupon introduced as Exhibit No. 17, and is in words and figures as follows:

"EXHIBIT No. 17

Chicot County, Drainage District

To) Pledge

Union Planters National Bank & Trust Company of Memphis, Tennessee, as Trustee

Know all men by these presents:

That for the purpose of refunding the outstanding bonds of Chicot County Drainage District of Chicot County, in the State of Arkansas, there be issued a series of Refunding Bonds dated as of July 1, 1935, bearing interest at the [fol. 66] rate of (4%) four per centum per annum payable semi-annually on the first day of January and July of the respective years, said bonds maturing as follows:

No. of Bonds	Denomination	Amount	Maturity
1 to 3, incl.	$1000.00	$3000.00	July 1, 1939
4	500.00	500.00	July 1, 1939
5 to 7, incl.	1000.00	3000.00	July 1, 1940
8	500.00	500.00	July 1, 1940
9 to 11, incl.	1000.00	3000.00	July 1, 1941
12	500.00	500.00	July 1, 1941
13 to 16, incl.	1000.00	4000.00	July 1, 1942
17 to 20, incl.	1000.00	4000.00	July 1, 1943
21 to 24, incl.	1000.00	4000.00	July 1, 1944
25 to 28, incl.	1000.00	4000.00	July 1, 1945
29	500.00	500.00	July 1, 1945
30 to 33, incl.	1000.00	4000.00	July 1, 1946
34	500.00	500.00	July 1, 1946
35 to 38, incl.	1000.00	4000.00	July 1, 1947
39	500.00	500.00	July 1, 1947
40 to 44, incl.	1000.00	5000.00	July 1, 1948
45 to 49, incl.	1000.00	5000.00	July 1, 1949
50 to 54, incl.	1000.00	5000.00	July 1, 1950
55	500.00	500.00	July 1, 1950
56 to 60, incl.	1000.00	5000.00	July 1, 1951
61	500.00	500.00	July 1, 1951

No. of Bonds	Denomination	Amount	Maturity
62 to 67, incl.	$1000.00	$6000.00	July 1, 1952
68 to 73, incl.	1000.00	6000.00	July 1, 1953
74 to 79, incl.	1000.00	6000.00	July 1, 1954
80	500.00	500.00	July 1, 1954
81 to 86, incl.	1000.00	6000.00	July 1, 1955
87	500.00	500.00	July 1, 1955
88 to 93, incl.	1000.00	6000.00	July 1, 1956
94	500.00	500.00	July 1, 1956
95 to 101, incl.	1000.00	7000.00	July 1, 1957
102 to 108, incl.	1000.00	7000.00	July 1, 1958
109	500.00	500.00	July 1, 1958
110 to 116, incl.	1000.00	7000.00	July 1, 1959
117	500.00	500.00	July 1, 1959
118 to 125, incl.	1000.00	8000.00	July 1, 1960
126 to 133, incl.	1000.00	8000.00	July 1, 1961
134 to 141, incl.	1000.00	8000.00	July 1, 1962
142	500.00	500.00	July 1, 1962
143 to 151, incl.	1000.00	9000.00	July 1, 1963
152 to 160, incl.	1000.00	9000.00	July 1, 1964
161 to 169, incl.	1000.00	9000.00	July 1, 1965
170	500.00	500.00	July 1, 1965
171 to 180, incl.	1000.00	10,000.00	July 1, 1966
181 to 190, incl.	1000.00	10,000.00	July 1, 1967
191	500.00	500.00	July 1, 1967
192 to 201, incl.	1000.00	10,000.00	July 1, 1968
202	500.00	500.00	July 1, 1968

[fol. 67] Said bonds being in substantially the following form:

United States of America
State of Arkansas

Chicot County Drainage District of Chicot County
4% Refunding Bond

Due ....., 19....

No. ..... $.....

Know all men by these presents:

The Chicot County Drainage District of Chicot County, in the State of Arkansas, acknowledges itself to owe, and for value received hereby promises to pay to bearer, or, if registered as to principal, to the registered holder hereof the sum of ..... Dollars, in lawful money of the United States of America, on the first day of July 19...., with interest thereon from the first day of July, 1935, at the rate of four per centum per annum, payable semi-annually on the first day of January and July in each year, on presentation and surrender of the annexed interest coupons as they severally mature. Both principal and interest of this bond are hereby made payable at the Union Planters National Bank & Trust Company,

in the City of Memphis, Tennessee, or at the Continental-Illinois National Bank & Trust Company of Chicago, in the city of Chicago, Illinois, at the option of the holder hereof.

This bond is one of a series of like tenor and effect, except as to numbers, denominations and maturities, aggregating One Hundred Ninety-three Thousand Five Hundred Dollars ($193,500), numbered from 1 to 202, both inclusive, issued for the purpose of refunding not less than a like par amount of the legally binding outstanding bonds of said District issued for the purpose of securing funds for the construction of the completed system of drainage improvements in such District, and under and in full compliance with the Constitution and laws of the State of Arkansas, including, among others, an Act of the General Assembly of the State of Arkansas, entitled: 'An Act to provide for the creation of Drainage Districts in this State,' approved May 27, 1909, as amended, Act No. 16 of [fol. 68] said General Assembly of the year 1927; Act No. 47 of said General Assembly of the year 1929; Act No. 240 of said General Assembly of the year 1931; and under and in full compliance with orders, resolutions and proceedings of the County Court of said County and the Board of Commissioners of said Drainage District, duly and legally had and adopted. This bond and attached interest coupons, as well as all other bonds and coupons forming a part of this issue, are payable out of the proceeds of taxes heretofore legally levied upon the real property, town lots, railroads and tramroads embraced within said district and benefited by said improvement, and are secured by a prior tax lien on all of said real property, town lots, railroads and tramroads.

The Drainage District hereby covenants that it is duly and legally existing as a drainage District under the Constitution and laws of the State of Arkansas; that the real property, town lots, railroads and tramroads within the district have been duly assessed for the making of said improvements, as required by law, and said assessments of benefits and taxes in such District have been duly pledged and mortgaged in trust for the security of this bond; that all acts, conditions and things required to be done precedent to and in the issuing of this bond, including the organization of said district, the adjudication of the benefits and damages against the real property, town lots, railroads and tramroads therein, in assessing benefits and in levying the

drainage tax and in pledging and mortgaging said assessments of benefits and taxes, have existed, have happened and have been performed in regular and due form as required by law; and that the total amount of bonds issued by this district, including this bond, does not exceed the net benefits assessed or the taxes levied and uncollected at the time said bonds are issued, or any statutory or constitutional limitation.

For the faithful performance, in apt time and manner, of every act required and necessary to provide for the prompt payment of the principal and interest of this bond, as the same mature, the full faith, credit, assessments of benefits and other resources of said drainage district are hereby irrevocably pledged.

[fol. 69] This bond is transferable by delivery, unless registered as to principal, at the office of the Secretary of the District, in the City of Lake Village, County of Chicot, State of Arkansas, and such registration noted hereon by said Secretary. After such registration, upon delivery to said Secretary of a written instrument of transfer executed by the registered holder, or by his attorney thereunto duly authorized, this bond may be transferred, and such transfer shall be plainly noted hereon. No transfer hereof shall thereafter be valid unless so made; but this bond may be discharged from registration by being, in like manner, transferred to bearer, and thereafter transferability by delivery shall be restored, and this bond may again, from time to time, be registered or transferred to bearer as before. No such registration shall affect the negotiability of the coupons appertaining thereto, which shall continue to be transferable by delivery merely, and shall remain payable to bearer.

If default shall be made in the payment of any interest coupon appertaining to this bond when and as the same shall become due and payable, and such default shall have continued for a period of thirty (30) days, the holder of this bond may, by notice in writing to the Secretary of the District, declare the principal of this bond to be due and payable immediately after such notice, and upon such declaration the principal of this bond shall become and be immediately due and payable.

This provision, however, is subject to the condition that, if at any time after the maturity of this bond shall have

been accelerated, all interest coupons pertaining thereto then in default shall be paid in full, the holder hereof may, by notice in writing delivered to said Secretary, waive such default and may thereby rescind and annul such declaration and its consequences, but no such waiver, rescission or annulment shall extend to or affect any subsequent default or impair any right consequent thereon.

This bond shall not be valid until it shall have been authenticated by the certificate hereon, duly signed by the Union Planters National Bank & Trust Company, of Memphis, Tennessee, as Trustee for the holders of the bonds of this series.

[fol. 70] The rights of the holder of this bond with reference to the assessments of benefits and taxes, are fully set forth in an instrument of pledge and mortgage executed by Chicot County Drainage District of Chicot County, Arkansas, to the Union Planters National Bank & Trust Company, of Memphis, Tennessee, as Trustee, and which is recorded in the office of the Recorder of Deeds of said county, and to which reference is hereby made.

In Witness Whereof, Chicot County Drainage District of Chicot County, Arkansas, has caused this bond to be signed by the members of its Board of Commissioners attested with its corporate seal, and has caused the interest coupons hereunto attached to be executed with the facsimile signature of the Chairman of its Board of Commissioners, as of the first day of July, 1935.

Chicot County Drainage District of Chicot County, Arkansas, by ——— ———, ——— ———, ——— ———, ——— ———, ——— ———, Commissioners.

(Coupon)

No. ———.

January,

On the first day of July, 19—, Chicot County Drainage District of Chicot County, Arkansas, promises to pay to bearer ——— Dollars, in lawful money of the United States of America, at the Union Planters National Bank & Trust Company, in the City of Memphis, Tennessee, or at the Continental-Illinois National Bank & Trust Company of Chicago, in the City of Chicago, Illinois, at the option of the holder hereof, being six months' interest then due

[fol. 71] on its refunding bond dated July 1, 1935, and numbered ————.

—— ——, Chairman.

(The signature of the Chairman to the coupons attached to said bonds may be lithographed or engraved.)

On the back of said bonds is to appear the following:

CERTIFICATE

This is one of the bonds aggregating $193,500, described within.

Union Planters National Bank & Trust Company, Trustee, by —— ——.

(Form of Registry Endorsement to appear on the back of each bond.)

Date of registration:	In Whose Name Registered	Signature of Secretary of District
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

Now, Therefore, in consideration of the sum of One Dollar and other good and sufficient considerations, and for the purpose of securing each and all of the aforesaid bonds and interest coupons thereto attached, as they severally mature, the said Chicot County Drainage District of Chicot County, Arkansas, doth hereby pledge, mortgage, assign, transfer and set over to the Union Planters National Bank & Trust Company, of Memphis, Tennessee, as Trustee, and to its successors and assigns, its entire assessment of benefits, which now amounts to $1,551,122.27, and all assessments of benefits that may hereafter be made upon the real property in said District, and also all uncollected as-[fol. 72] sessments and taxes levied by the County Court of said county upon the real property, town lots, railroads and tramroads in said district, together with all assessments and taxes that may hereafter be levied thereon; and in addition to the rights of individual bondholders in case

any property owner makes default in payment of any assessment, it is agreed that said Trustee, on behalf of the holder of the bonds hereby secured, may take all steps, whether by suit in chancery or mandamus, for the enforcement of the right of the holders of said bonds that are granted to the said holders or to the commissioners of this district by the terms of the act of the General Assembly of the State of Arkansas; and as a special security for the payment of the bonds hereinbefore described, all sums received from the redemption or sale of lands heretofore forfeited to the district for the non-payment of taxes, any other income that may be received from said lands such as rentals, income from the sale of timber, etc., and all taxes now overdue upon any of the lands, of the district are specially pledged; and all sums derived from the redemption or sale of such lands and all claims for taxes now due the said district are hereby assigned to the said Trustee, to be deposited with the Union Planters National Bank & Trust Company, of Memphis, Tennessee, and to be applied exclusively to the payment of the interest and principal of the bonds hereinbefore set forth.

All bonds, as they are paid, shall be cancelled by the said Union Planters National Bank & Trust Company, of Memphis, Tennessee, and returned to the District.

Said District further agrees that if default takes place in the payment of any of said bonds or coupons, and that by reason thereof the Trustee shall take any action hereunder on behalf of the holders of the bonds or coupons, there shall be paid to the said Trustee, out of the proceeds of said assessments and before the payment of the interest and principal of said bonds, a reasonable compensation for its services and for the services of such counsel as the Trustee may find it necessary to employ. Any bondholder shall have the right to take any action in his own behalf, which right shall be cumulative to his right to insist upon the action being taken by the Trustee.

[fol. 73] In case the Trustee refuses to act, resigns, dies or becomes incompetent, the holder or holders of a majority of the bonds aforesaid may, by an instrument filed in the once of the Recorder of Deeds of Chicot County, in the State of Arkansas, appoint a new trustee; and the like majority in amount of the holders of said bonds may, by an instrument so executed and filed, remove the Trustee and appoint a new trustee in his place. Any substituted

trustee shall have all the rights and powers of the Trustee herein named.

The District will pay the cost of recording and satisfying this pledge and any other or further instruments executed hereunder.

The District further agrees that if default is made for thirty days in the payment of any interest coupon, the holder of the bond thereto attached may declare the same immediately due and payable.

Said Trustee shall be responsible only for wilful misconduct in the performance of its duties. The recitals of fact contained in said bonds and in this instrument are made by the District, and shall not be considered as made by the Trustee. The Trustee shall not be required to see that this pledge is properly executed or recorded, nor shall it be required to take notice or be deemed to have notice of any default of said district, unless it shall have been specifically notified in writing of such default, nor shall it be required to take action under this pledge until it has been indemnified to its satisfaction by the holder or holders of the bonds above mentioned, or some of them, against loss or expense by reason of taking such action. The Trustee may at any time resign the trust by mailing its resignation to the Chairman or Secretary of the Board of Commissioners of said District, at the City of Lake Village, Arkansas.

It is hereby covenanted and agreed that the Trustee herein named shall be subrogated, for the benefit of the holders of the bonds hereinabove provided for, to all the rights, titles and interest of the holders of the bonds which have been refunded by the issue of bonds authorized hereby; and although said bonds may have been canceled, they [fol. 74] shall, upon the failure to pay the interest, or principal of the bonds secured hereby at any time for a period of thirty days, be deemed to be valid and subsisting securities, attended with all the rights, equities and remedies which attended them when in the hands of innocent purchasers for value. There shall, however, be but one satisfaction, and if the collection of the bonds which have been refunded is enforced, it shall operate as a satisfaction of the bonds hereby authorized.

In Witness Whereof, the said Chicot County Drainage District of Chicot County, Arkansas, has caused this instru-

ment to be executed under the hands of its commissioners and under its corporate seal, this 30 day of October, 1935.

Chicot County Drainage District of Chicot County, Arkansas, by C. M. Matthews, by N. W. Bunker, by Sam Epstein, by B. C. Clark, by F. H. Dantzler, Commissioners.

(Seal of Chicot County Drainage District.)

STATE OF ARKANSAS,
County of Chicot, ss:

On this 30 day of October, 1935, before me a Notary Public, duly commissioned, qualified and acting within and for the said County and State, appeared C. M. Matthews, B. C. Clerk, Sam Epstein, F. H. Dantzler and N. W. Bunker, Commissioners of Chicot County Drainage District of Chicot County, Arkansas, being the persons authorized by the said District to execute such instrument, to me personally well known, who state that they were commissioners of said Drainage District, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said District; and further stated and acknowledged that they had so signed, executed [fol. 75] and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal, this 30 day of October, 1935.

Raymond L. Hudson, Notary Public. (Seal.)

My commission expires 12-1-37.

Filed for record Oct. 31st at 9:00 o'clock A. M. Recorded October 31st, 1935."

Subsequent to the time proceedings were instituted to refinance the indebtedness of this district, the rate of assessed benefits was reduced from 4% per year to 2% per year, effective in 1934 taxes payable in 1935, the tax now being levied at the rate of 2% per year, 1½% for bond service and ½ of 1% for maintenance and operations. All these taxes have been pledged to secure the indebtedness incurred under the bond issue of July 1, 1935.

On cross-examination, the witness testified as follows: (Without objection, a certified copy of the pledge securing

the original bond issue of the district was introduced as Exhibit No. 18, and is in words and figures as follows:)

"EXHIBIT No. 18

CHICOT COUNTY DRAINAGE DISTRICT,
of Chicot County, Arkansas:

To: Pledge Liberty Central Trust Company, in St. Louis, Mo. as Trustee.

Know All Men By These Present: That, Whereas, Chicot County Drainage District, of Chicot County, in the State of Arkansas, has executed its coupon bonds payable at the office of the Liberty Central Trust Company in St. Louis, Missouri, as follows:

[fol. 76]

Nos. of Bonds	Amount	Maturity
1 to 22, Inc.	22,000	October 15, 1929
23 " 45, "	23,000	" 15, 1930
46 " 69, "	24,000	" 15, 1931
70 " 95, "	26,000	" 15, 1932
96 to 123, inc.	28,000	" 15, 1933
124 " 153, "	30,000	" 15, 1934
154 " 184, "	31,000	" 15, 1935
185 " 217, "	33,000	" 15, 1936
218 " 252, "	35,000	" 15, 1937
253 " 289, "	37,000	" 15, 1938
290 " 328, "	39,000	" 15, 1939
329 " 369, "	41,000	" 15, 1940
370 " 411, "	42,000	" 15, 1941
412 " 456, "	45,000	" 15, 1942
457 " 504, "	48,000	" 15, 1943
505 " 554, "	50,000	" 15, 1944
555 " 607, "	53,000	" 15, 1945
608 to 663, inc.	56,000	October 15, 1946
664 " 722, "	59,000	" 15, 1947
723 " 784, "	62,000	" 15, 1948
785 " 850, "	66,000	" 15, 1949

All of said bonds bearing date of April 15, 1924, and bearing interest at the rate of five and one-half per cent per annum, payable semi-annually on the fifteenth day of April and October of each year as evidenced by coupons thereto attached, and being substantially in the following form except as to dates of maturity, to-wit:

United States of America
State of Arkansas
County of Chicot
Chicot County Drainage District,
5½% Drainage Bond

No. $1000.00

Know All Men By These Presents: That Chicot County Drainage District, of the County of Chicot, in the State

of Arkansas, acknowledges itself to owe and for value received, hereby promises to pay to bearer the sum of One Thousand Dollars in gold coin of the United States of America of the present standard of weight and fineness on the fifteenth day of October, 19—, at the rate of five and one-half per centum per annum, payable semi-annually on the fifteenth day of April and October in each year, on presentation and surrender of the annexed interest coupons as they severally mature. Both principal and interest of [fol. 77] this bond are hereby made payable at the office of the Liberty Central Trust Company, in the City of St. Louis, State of Missouri.

This bond is one of a series of like tenor and effect except as to maturity, aggregating Eight Hundred and Fifty Thousand Dollars ($850,000.00); numbered from one (1) to eight hundred and fifty (850), inclusive, issued for the purpose of hastening the work of constructing a system of drainage in said Chicot County Drainage District, under and pursuant to and in full compliance with the constitution and laws of the State of Arkansas, including among others, Act Number 405 of the Extraordinary Session of the General Assembly of the State of Arkansas of the year 1920, entitled, 'An Act to Create and Establish the Chicot County Drainage District in Chicot County, to provide for a Board of Commissioners; Assessment of Benefits, Collection of Taxes, Issuance of Bonds, Construction of Drains and Ditches and for Other Purposes,' approved February 25, 1920, Act No. 432 of the Acts of Said General Assembly of the year 1921, 'An Act to Amend Section 16 heretofore or hereafter assessed, and all other resources of said Drainage District are hereby irrevocably pledged.

This bond shall not be valid until it shall have been authenticated by the certificate hereon duly signed by the Liberty Central Trust Company, of St. Louis, Missouri.

In Witness Whereof, Chicot County Drainage District of Chicot County, in the State of Arkansas, has caused this bond to be signed by the members of its Board of Commissioners, attested with its corporate seal and has caused the interest coupons hereunto attached to be executed with the fac simile signature of the Chairman of its Board of Commissioners on the fifteenth day of April, 1924.

Chicot County Drainage District of Chicot County, Arkansas, By Joe Sloss, C. P. Wilson, R. D. Chotard, Hermon Carlton, C. M. Matthews, Commissioners.

[fol. 78] Coupon

No. —.

April

On the fifteen day of October, 19—, Chicot County Drainage District of Chicot County, in the State of Arkansas, promises to pay to bearer Twenty-seven and 50/100 Dollars in gold coin of the United States of America, at the office of the Liberty Central Trust Company, St. Louis, Missouri, being six months' interest then due on its bond dated April 15, 1924, and numbered —.

Joe Sloss, Chairman.

The signature of the Chairman to the coupons attached to said bonds may be lithographed or engraved.

On the filing of said bonds is to appear the following:

Certificate

This is to certify that this bond is one of a series of eight hundred and fifty (850) bonds of like tenor and effect, except as to maturity, mentioned and described on the face thereof.

Liberty Central Trust Company, By —— ——.

St. Louis, Missouri,
—— —, 1924.

Now, Therefore, in consideration of the sum of One Dollar ($100) and other good and sufficient considerations, and for the purpose of securing the payment of each and all of the aforesaid bonds, and the interest coupons thereto attached, as they severally mature, the said Chicot County Drainage District of Chicot County in the State of Arkansas, doth hereby pledge, assign, transfer, mortgage and set over to the said Liberty Central Trust Company, of the City of St. Louis, and State of Missouri, as Trustee, all uncollected assessments levied by the County Court upon the real property, public roads, railroads and tramroads in said District, together with all assessments that may hereafter be levied thereon, and in case any property owner makes default in the payment of any assessment, [fol. 79] it is agreed that said Trustee, in behalf of the holders of the bonds hereby secured, may take all steps, whether by suit in Chancery or mandamus, for the enforce-

ment of the rights of the holders or to the Commissioners of this district by the terms of said Acts of the General Assembly of the State of Arkansas referred to in said bonds.

Said district further agrees that if default takes place in the payment of any of said bonds or coupons, there shall be paid to said Trustee out of the proceeds of said assessments, and before the payment of the interest and principal of said bonds, a reasonable compensation to the Trustee and to such counsel as the trustee may find it necessary to employ. In case the Trustee refuses to act, resigns or ceases to exist, the holder or holders of a majority of the bonds aforesaid, may, by an instrument filed in the office of the Recorder of Deeds of Chicot County, in the State of Arkansas, appoint a new Trustee, who shall have all the rights and powers of the trustee herein named.

The District further agrees that if default is made for thirty days in the payment of any interest coupon, the holder of the bond thereto attached may declare the same immediately due and payable.

The District will pay the cost of recording and satisfying this pledge.

The said trustee shall be entitled to reasonable compensation by the district for all services performed and reimbursement for expenses incurred in the performance of its duties under this trust.

The said Trustee shall be responsible only for wilful misconduct in the execution of its trust. The recitals of fact contained in said bonds and in this instrument are statements of the said district and shall not be considered as made by the Trustee. The Trustee shall not be required to take notice or be deemed to have notice of any default of said Drainage District, unless it shall have been specifically notified in writing of such default, nor shall it be required to take action under this pledge until it shall have been indemnified to its satisfaction by the holder or holders of the bonds above mentioned, or some of them, against loss or expense by reason of taking said action.

[fol. 80] The trustee may at any time resign the trust on ten days' notice by mail addressed to the Chairman or Secretary of the Board of Commissioners, at the Post Office, of Lake Village, Arkansas.

In Witness Whereof, the said Chicot County Drainage District of Chicot County, Arkansas, has caused this instru-

ment to be executed under the hands of its commissioners and under its corporate seal, on this 5th day of August, 1924.

Chicot County Drainage District, of Chicot County, Arkansas, By Joe Sloss, C. P. Wilson, R. D. Chotard, Herman Carlton, C. M. Matthews, Commissioners. (Seal.)

STATE OF ARKANSAS,
County of Chicot.

On this 5th day of August, 1924, before me, a Notary Public, duly commissioned, qualified and acting within and for the said County and State, appeared Herman Carlton, Joe Sloss, R. D. Chotard, C. P. Wilson and C. M. Matthews, the Commissioners of Chicot County Drainage District of Chicot County, Arkansas, being the persons authorized by said District to execute such instrument, to me personally well known, who stated that they were the commissioners of Chicot County Drainage District of Chicot County, Arkansas, and were duly authorized in their respective capacities to execute the foregoing instrument for and in the name and behalf of said district; and further state and acknowledged that they had so signed, executed and delivered said foregoing instrument for the consideration, uses and purposes therein mentioned and set forth.

In Testimony Whereof, I have hereunto set my hand and official seal, this 5th day of August, 1924.

W. H. Moore, Notary Public. (Seal.)

My commission will expire April 17, 1925.

[fol. 81] Filed for Record August 6th, 1924 at 10:35 o'clock A. M. Recorded August 6th, 1924.

CLERK'S CERTIFICATE OF TRANSCRIPT

STATE OF ARKANSAS,
County of Chicot, ss:

I, Dixon T. Gaines, Clerk of the Circuit Court and Ex-Officio Recorder in and for the County and State aforesaid, do hereby certify that the annexed and foregoing seven (7) pages contain a true and perfect copy of a certain Pledge executed by Chicot County Drainage District of Chicot County, Arkansas, to Liberty Central Trust Company of St. Louis, Missouri, as therein set forth, and as

the same appears of record at page 257 of Volume R-3 of the Records of Chicot County, Arkansas.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, this the 12th day of July, 1937.

Dixon T. Gaines, Clerk. By, Irene Turpin, D. C."

The District issued $193,500.00 of new bonds in order to take up the old bonds. Since these new bonds were issued in 1935, we have paid $110,500.00 of them. We now have outstanding only $83,000.00 of new bonds. We have approximately $5,000.00 cash on hand in addition to the money deposited in the court here. The only indebtedness the district now has is the $83,000.00 of new bonds, and its indebtedness on the old bonds that have not come in. The last figure we had was that approximately $24,000.00 were still outstanding.

On redirect examination, Mr. Moore testified as follows:

Prior to the time the refinancing of the district's indebtedness was accomplished the district was bankrupt. It had been in default for a considerable time and the interest and principal were both in default. It was only through the accomplishments under the decree of this court and in the bankruptcy court that the district was able to get itself in a solvent condition.

[fol. 82] On recross-examination, witness testified as follows:

I do not have before me the total assessed benefits in the district, but I believe it is over $2,000,000.00. The total acreage is over 147,000 acres.

This was all the testimony offered at the trial.

Whereupon the plaintiffs requested findings of fact as follows:

FINDINGS OF FACT REQUESTED BY PLAINTIFFS

"The plaintiffs, The Baxter State Bank, is a corporation, and Lena S. Shields an individual, and both residents of Baxter Springs in the State of Kansas. That the defendant, Chicot Drainage District, of Chicot County, was

duly organized under special Act 405 of the extraordinary session of the General Assembly of Arkansas of 1920, approved February 20th, 1920, as amended by Act 432 of the Acts of 1921, and under the General Drainage Law of Arkansas, approved May 27th, 1909, and it is and has been operating as such ever since it organization. That the defendant district regularly issued and the plaintiffs have purchased and owned the following bonds, dated April 15th, 1924, bearing five and one-half per cent (5½%) interest from date, interest payable semi-annually, and said bonds are outstanding due and unpaid, to-wit:

Owner,	Bond No.,	Amount	Due Date
The Baxter State Bank	207	$1000	October 1936
Same	402	1000	October 1941
Same	587	1000	October 1945
Same	588	1000	October 1945
Same	589	1000	October 1945
Same	590	1000	October 1945
Same	591	1000	October 1945
Same	825	1000	October 1949
Same	826	1000	October 1949
Same	827	1000	October 1949
Same	834	1000	October 1949
Lena S. Shields	197	1000	October 15, 1936
Same	299	1000	Oct. 15, 1937
Same	312	1000	Oct. 15, 1939

[fol. 83] "That interest was paid on said bonds up to October 15th, 1932 and all interest and maturities thereafter due, and the Principal and interest therein is now due the plaintiffs.

"The foregoing bonds are valid and secured by a pledge executed by the defendant District of even date with said bond pledging all the assets and income of the district to secure said bonds.

"That the decree of this Court entered on the 28th day of March, 1936, wherein the Chicot Drainage District filed its petition for authority to effect a plan of debt readjustment under the terms and provisions of an Act of the Seventy-third Congress, numbered 251, approved May 21, 1934, constituting an amendment to the General Bankruptcy Law of the United States, Title 11, U. S. C. A., Paragraph 301 to 303, is void and that the Court therein in said cause number 4357 'being styled In the Matter of Chicot County Drainage District, Bankrupt,' had no jurisdiction of the parties plaintiff herein nor of the subject

matter and said decree as to these parties being void because said act was unconstitutional."

The foregoing findings of fact were given by the court, to the giving of which the defendant saved exceptions to each and every paragraph.

The defendant requested the following findings of fact:

FINDINGS OF FACT REQUESTED BY DEFENDANT

"Defendant requests the Court to make the following findings of fact:

"1. That the plaintiff, Baxter State Bank, is the owner of bonds issued by Chicot County Drainage District, dated April 15, 1924, in the total amount of Eleven Thousand Dollars ($11,000.00), and numbered as follows:

207, 402, 587, 588, 589, 590, 591, 825, 826, 827, 834.

"That plaintiff was the owner of said bonds on the 17th day of June, 1935, and has continued to be the owner since said date.

[fol. 84] "2. That the plaintiff, Mrs. Lena S. Shields, is the owner of bonds issued by the Chicot County Drainage District dated April 15, 1924, in the total amount of Three Thousand Dollars ($3,000.00) and numbered as follows:

197, 299, 312.

"That she was the owner of said bonds on July 17, 1935, and has continued to be the owner of said bonds since said date.

"3. That on the 17th day of June, 1935, the Chicot County Drainage District filed in the United States District Court for the Western Division of the Eastern District of Arkansas a petition for authority to effect a plan of debt readjustment under the terms and provisions of an act of the Seventy-Third Congress, numbered 251, approved May 21, 1934, constituting an amendment to the General Bankruptcy Law of the United States, Title 11, U. S. C. A., Paragraphs 301 to 303, said cause being styled 'In the Matter of Chicot County Drainage District, Bankrupt', it being cause No. 4357 in said court.

"4. That the plaintiffs, The Baxter State Bank and Mrs. Lena S. Shields, were made parties to said proceeding by publication of a notice of said proceedings in accordance with an order dated June 20, 1935, of the court wherein said cause was filed, and by mailing to them personally a notice of said proceedings in accordance with the said order. That said notices were received by the plaintiffs.

"5. That all things required to be done by said act of the Seventy-Third Congress, numbered 251, approved May 21, 1934, were done and performed by the defendant district, and that on the 28th day of March, 1936, said court entered a final decree in said cause wherein it was recited that all the bonds issued under date of April 15, 1924, whether theretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, were thereby cancelled, annulled, and held for naught as enforceable obligations of the petitioning district, except as therein provided, and that the holders thereof were forever restrained and enjoined from otherwise asserting any claim or demand against the petitioning district or its officers, [or against [fol. 85] the petitioning district or its officers,] or against the property situated therein, or the owners thereof.

"6. That at the time said proceedings were instituted on July 17, 1935, there were outstanding bonds against said district in the total amount of Seven Hundred Sixty-two Thousand, Five Hundred Thirty-six and 36/100 Dollars ($762,536.36). That the holders of all of said bonds, except the owners of approximately Twenty-four Thousand Dollars ($24,000.00) of bonds, had theretofore accepted and approved the plan of readjustment offered by the defendant district, which plan was confirmed and approved by the United States District Court for the Eastern District of Arkansas, Western Division, in Cause No. 4357 in said court, it being styled 'In the Matter of Chicot County Drainage District, Bankrupt.' That ample notice by publication and by mail was given to plaintiffs of the hearing held by the court to determine whether said plan should be approved and that opportunity was presented to plaintiffs to object to said plan. That plaintiffs had actual notice of this hearing but did not appear or contest the approval of the plan.

"7. That, pursuant to the decree in said cause above mentioned, the defendant, Chicot County Drainage Dis-

trict, issued refunding bonds in the total amount of One Hundred Ninety-three Thousand, Five Hundred Dollars ($193,500.00), and, to secure said bonds, executed its mortgage and pledge wherein it pledged its entire assessment of benefits and all assesments of benefits that may thereafter be made upon the real property in said district to the Union Planters National Bank & Trust Company of Memphis, Tennessee, as Trustee. That said mortgage and pledge transferred to the trustee as security for said bonds all assets of the district of every kind and nature.

"8. That, in reliance upon the validity of the proceedings in Case No. 4357, hereinbefore mentioned, and, in reliance upon the validity of the mortgage and pledge executed by said district to secure its bond issue of July 1, 1935, in the total amount of One Hundred Ninety-three Thousand, Five Hundred Dollars ($193,500.00), the Reconstruction Finance Corporation purchased said entire issue of bonds.

[fol. 86] "9. That, although the plaintiffs, and each of them, were served in accordance with the Act of the Seventy-Third Congress, numbered 251, approved May 21, 1934, in said Cause No. 4357, neither of said plaintiffs made any appearance therein or objected in any manner to the proceedings therein had, and neither of said parties took an appeal or attempted to take an appeal from the final decree of said court entered on the 28th day of March, 1936, and that the time for appeal from said cause had now expired, and that the term at which said decree was entered has expired.

"10. That on the 11th day of November, 1935, the County Court of Chicot County, Arkansas, entered an order wherein it was ordered that said district levy annual taxes against the assessments in said district in the amount of 2 per cent of the assessed benefits, and that said levy of 2 per cent be used during the years 1935 to 1967, inclusive, for the purpose of paying the principal and interest of the refunding bonds issued by said district, and for building up a reserve fund for payment of said bonds.

"11. That the security of the refunding bonds issued July 1, 1935, would be affected and prejudiced should plaintiffs herein recover any amount in excess of the amount al-

lotted and decreed to them under the decree of this court in Case No. 4357, hereinbefore mentioned."

The court gave findings of fact numbered 1, 2, 3, 4, 5, 6, 7, 9, and 10, over the several and separate objections of plaintiffs. The court refused to give findings numbered 8 and 11, and the defendant saved exceptions to the refusal of the court to give these findings.

The court made the following declarations of law at the request of plaintiffs:

DECLARATIONS OF LAW REQUESTED BY PLAINTIFFS

"The plaintiffs should recover full amount of bonds with interest for the reason that the defense based upon judgment of this Court in cause No. 4357, being styled in the Matter of Chicot County Drainage District, Bankrupt, is void for the reason that the Act under which it was rendered [fol. 87] was unconstitutional and said judgment affords no defense to the validity of said bonds."

The defendant saved exceptions to the above declarations of law made by the court.

The defendant requested the following declarations of law:

DECLARATIONS OF LAW REQUESTED BY DEFENDANT

"Defendant requests the court to make the following declarations of law:

"1. That the United States District Court for the Western Division of the Eastern District of Arkansas, in Cause No. 4357 in said Court, it being styled 'In the Matter of Chicot County Drainage District, Bankrupt', had jurisdiction over the plaintiffs in this action, the Baxter State Bank and Mrs. Lena S. Shields, and had jurisdiction over the subject matter involved in said cause.

"2. That the final decree of said Court in said Cause No. 4357, entered on the 28th day of March, 1936, is binding upon the plaintiffs in this action and is res adjudicata of the issues involved in this suit.

"3. That the plaintiffs' complaint herein should be dismissed with costs to the defendant without prejudice to the rights of the plaintiffs to recover any and all sums to which

they may be entitled under the terms and provisions of the decree of this court in Cause No. 4357."

The court refused to make the above declarations of law and the defendant saved its several and separate exceptions to the refusal of the court to make the above declarations of law.

IN UNITED STATES DISTRICT COURT

APPROVAL OF BILL OF EXCEPTIONS

I, the undersigned, United States District Judge who presided at the trial in the above entitled cause, do hereby certify that the foregoing bill of exceptions contains all of the material facts, matters, things, proceedings, objections, rulings, and exceptions thereto occurring upon the trial of said cause and not heretofore a part of the record herein, including all evidence adduced at the trial (or all [fol. 88] evidence material to the issues presented by the assignments of error); and I further certify that the exhibits set forth or referred to, or both, in the foregoing bill of exceptions, constitute all the exhibits offered in evidence at the said trial, and I hereby make all of said exhibits a part of the foregoing bill of exceptions; and I hereby settle and allow the foregoing bill of exceptions as a full, true, and correct bill of exceptions in this cause and order the same filed as part of the record herein, and I further order the clerk of this court to attach to the said bill of exceptions all of the said exhibits not set forth therein; and to transmit said entire bill of exceptions, including all exhibits whatsoever, to the Circuit Court of Appeals for the Eighth Circuit.

I further certify that the foregoing bill of exceptions contains all local rules relating to the extension of the term for the purpose of presenting, settling, and filing a bill of exceptions, and all orders made by me extending the time for such presentation, settling and filing, and that the foregoing bill of exceptions is presented, settled, and allowed within the time prescribed for that purpose.

Dated this 27th day of September, 1938.

Thomas C. Trimble, United States District Judge; G. W. Hendricks, Atty. for Pltf.; E. L. McHaney, Jr., for Def.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed Sept. 1, 1938

To the Honorable Thomas C. Trimble, Jr., District Judge:

[fol. 89] The defendant herein, feeling itself aggrieved by the final judgment made and entered in this cause finding the issues of fact and law in favor of the plaintiff, hereby prays and takes an appeal from said judgment to the Circuit Court of Appeals for the Eighth Circuit, for the reasons specified in the Assignment of Errors which is filed herewith; and it prays that its appeal be allowed and that citation issue to the plaintiffs herein, as provided by law, commanding them to appear before the Circuit Court of Appeals for the Eighth Circuit to do and receive what may appertain to justice to be done in the premises, and that a transcript of the record, proceedings and papers upon which said judgment was based, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri.

And your petitioner further prays that the proper order be made herein touching the security that should be required of it to perfect its appeal.

Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

ASSIGNMENT OF ERRORS—Filed Sept. 1, 1938

Comes now the defendant and appellant herein and files the following assignment of errors upon which it will rely upon appeal to the United States Circuit Court of Appeals for the Eighth Circuit:

1

The court erred in making declarations of law in favor of the plaintiffs as follows:

"The plaintiffs should recover full amount of bonds, with interest, for the reason that the defense based upon judg-

ment in this court in Cause No. 4357, being styled "In the matter of Chicot County Drainage District, Bankrupt," is void for the reason that the act under which it was rendered was unconstitutional and said judgment affords no defense to the validity of said bonds."

[fol. 90] The defendant excepted to the action of the court in making said declarations of law and its exceptions were noted of record.

2

The court erred in refusing to grant defendant's request for declaration of law No. 1 as follows:

"That the United States District Court for the Western Division of the Eastern District of Arkansas, in Cause No. 4357 in said Court, it being styled 'In the Matter of Chicot County Drainage District, Bankrupt,' had jurisdiction over the plaintiffs in this action, the Baxter State Bank and Mrs. Lena S. Shields, and had jurisdiction over the subject-matter involved in said cause."

To which action of the court the defendant excepted and its exceptions were noted of record.

3.

The court erred in refusing to grant defendant's request for declaration of law No. 2, as follows:

"That the final decree of said Court in said Cause No. 4357, entered on the 28th day of March, 1936, is binding upon the plaintiffs in this action and is res judicato of the issues involved in this suit."

To which action of the court the defendant excepted and its exceptions were noted of record.

4

The court erred in refusing to grant defendant's request for declaration of Law No. 3, as follows:

"That the plaintiff's complaint herein should be dismissed with costs to the defendant without prejudice to the rights of the plaintiffs to recover any and all sums to which they may be entitled under the terms and provisions of the decree of this court in Cause No. 4357."

To which action of the court the defendant excepted and its exceptions were noted of record.

5

The court erred in finding the issues of fact and of law in favor of the plaintiffs.

[fol. 91] Wherefore, the defendant and appellant prays that the judgment in said cause be reversed and the cause remanded to the District Court, with directions to said court as to further proceedings therein, and for such other and further relief as may be just in the premises.

Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Attorneys for Defendant.

[File endorsement omitted.]

In United States District Court

[Title omitted]

Order Allowing Appeal—Filed Sept. 1, 1938

The defendant in the above entitled action having filed herein its petition for appeal from the judgment of the court on the 7th day of June, 1938, now, on motion of E. L. McHaney, Jr., attorney for petitioner,

It Is Ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit from the judgment heretofore entered herein be and the same is hereby allowed, and that a certified transcript of the record be forwarded to the United States Circuit Court of Appeals for the Eighth Circuit at St. Louis, Missouri.

It Is Further Ordered that the appellant furnish a bond on appeal in the amount of $500.00, the same to operate as a cost bond only.

Thomas C. Trimble, United States District Judge.

[File endorsement omitted.]

[fol. 92] Bond on appeal for $500.00 approved and filed Sept. 1, 1938 omitted in printing.

[fol. 93] Citation in usual form showing service on G. W. Hendricks, filed Sept. 1, 1938 omitted in printing.

[fol. 94] IN UNITED STATES DISTRICT COURT

PRAECIPE FOR TRANSCRIPT—Filed Sept. 1, 1938

To: Honorable Sid B. Redding, Clerk of the United States District Court for the Eastern District of Arkansas, Western Division:

Will you please incorporate in the transcript of record on appeal in the United States Circuit Court of Appeals for the Eighth Circuit, in the above entitled cause, the following:

1. Complaint.
2. Summons.
3. Answer.
4. Demurrer to Answer.
5. Stipulation for Waiver of Jury.
6. Judgment.
7. Order extending time for filing Bill of Exceptions.
7-A. Bill of Exceptions.
8. Petition for Appeal.
9. Assignment of Errors.
10. Order allowing Appeal.
11. Bond, with approval thereon.
12. Citation and acceptance of Service.
13. This Praecipe.
14. Clerk's Certificate.

Dated this 1st day of September, 1938.

Grover To Owens, S. Lasker Ehrman, E. L. McHaney, Attorneys for Appellant.

[fol. 95] Due personal service of the within Praecipe by copy, is hereby admitted this 1st day of September, 1938.

G. W. Hendricks, Attorney for Appellees.

[File endorsement omitted.]

Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 96] Appearances of counsel omitted in printing.

[fol. 97] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER OF SUBMISSION—March 17, 1939

This cause having been called for hearing in its regular order, argument was commenced by Mr. E. L. McHaney, Jr., for appellant, continued by Mr. Arthur J. Johnson for appellees, and concluded by Mr. E. L. McHaney, Jr., for appellant.

Thereupon, this cause was submitted to the Court on the transcript of the record from said District Court and the briefs of counsel filed herein.

[fol. 98] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT, MARCH TERM, A. D. 1939

No. 11,342

CHICOT COUNTY DRAINAGE DISTRICT, Appellant

vs.

THE BAXTER STATE BANK and MRS. LENA S. SHIELDS, Appellees

Appeal from the District Court of the United States for the Eastern District of Arkansas

Mr. E. L. McHaney, Jr. (Mr. James R. Yerger, Mr. Grover T. Owens, and Mr. S. Lasker Ehrman were with him on the brief) for Appellant.

Mr. Arthur J. Johnson (Mr. G. W. Hendricks was with him on the brief) for Appellees.

Before Gardner and Woodrough, Circuit Judges, and Otis, District Judge.

OPINION—April 29, 1939

GARDNER, Circuit Judge, delivered the opinion of the court.

This is an appeal from a judgment entered in favor of appellees, who were plaintiffs below, in an action on certain bonds owned by them and issued by the appellant Drainage District. The parties will be referred to as they appeared

in the lower court. No question is raised as to the suffi- [fol. 99] ciency of the pleadings. The defendant answered plaintiffs' complaint, which was in conventional form, pleading that in a bankruptcy proceeding brought in the United States District Court for the Eastern District of Arkansas, it had been adjudged in effect that the bondholders of the district, including the plaintiffs, were entitled to recover in that proceeding the sum of approximately $360.00 on each $1,000.00 bond; that under the terms and provisions of said decrees, plaintiffs had no valid claim against the defendant but were forever restrained and enjoined from asserting any claim or demand whatever against defendant, except as provided in said decree.

The bankruptcy proceedings referred to were initiated on June 17, 1935, by filing in the United States District Court for the Eastern District of Arkansas, a petition for authority to effect a plan of debt readjustment, pursuant to amendments to the Bankruptcy Act, adopted May 24, 1934, and designated as U. S. C. A. Title 14, Sections 301, 302 and 303. No question is raised as to the regularity of these proceedings as prescribed by the Act. Plaintiffs were made parties to said proceedings by publication of a notice thereof pursuant to order of the bankruptcy court, and by mailing to them personally a notice of said proceedings, which notice was received by each of them, but neither of them appeared therein either in person or by attorney. The decree which was entered therein on March 28, 1936, provided in part as follows:

"(c) That all the old bonds and other obligations of the petitioning district affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof;"

No appeal was taken by the plaintiffs from the bankruptcy decree above referred to.

[fol. 100] The lower court held that the decree in bankruptcy entered March 28, 1936, was void because the court was without jurisdiction of the parties plaintiff or of the subject matter; that the plaintiffs were therefore entitled to recover the full amount of their bonds, and judgment was entered accordingly.

The determining question on this appeal is whether the bankruptcy decree constituted a defense to the maintenance of this action. The act amendatory of the bankruptcy laws under which the proceedings were had, culminating in the above-mentioned decree, was, subsequent to the entry of the decree, held to be unconstitutional because it materially restricted the states in the control of their financial affairs. Ashton v. Cameron County Water Improvement Dist., 298 U. S. 513. It was held in that decision that the bankruptcy power of Congress does not extend to the states or their political subdivisions. This decree, as has been observed, purported to cancel the obligations upon which the present suit was brought. The bankruptcy court rendering the decree here pleaded as res judicata was a court of limited jurisdiction. Smith v. Chase National Bank (CCA8) 84 Fed. (2d) 608; Nixon v. Michaels (CCA8) 38 Fed. (2nd) 420. Its powers of compositions were fixed and limited by statute. Wheeling Structural Steel Co. v. Moss (CCA4) 62 Fed. (2d) 37. Its jurisdiction was therefore wholly dependent upon the amendatory act which was held to be unconstitutional in Ashton v. Cameron County Water Improvement District, supra. The act itself (Title 11, U. S. C. A., Secs. 301-303) indicates that Congress was of the view that the bankruptcy court was without jurisdiction except as it might be conferred by that act. Section 302 provides as follows:

"Until January 1, 1940, in addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in this chapter of this title."

Then follows Section 303, which provides that a municipality or other political subdivision may file a petition setting out that the district is insolvent or unable to meet its debts, and submitting a plan of readjustment. The requirements of the petition are described in the act, and it is provided that upon the filing of such petition, the judge

[fol. 101] shall enter an order either approving or dismissing it.

Without further detailing the proceedings purported to be authorized by the act, it is sufficient for the purpose of this opinion to state that the proceeding taken was that prescribed by the statute, and if the court acquired jurisdiction, it was because of a compliance with the procedure so prescribed, and not otherwise.

If the decree was void, it could not be successfully pleaded as res judicata. McDonald v. Mabee, 243 U. S. 90. The act which purported to confer jurisdiction, being unconstitutional, was void and in legal contemplation was inoperative. Chicago, I. & L. R. Co. v. Hackett, 228 U. S. 559; Norton v. Shelby Co., 118 U. S. 425; Security Savings Bank v. Connell (Ia.) 200 N. W. 8; Servonitz v. State (Wis.) 113 N. W. 227; 1 Black on Judgments, Sec. 216.

In Chicago, I. & L. R. v. Hackett, supra, Mr. Justice Lurton, speaking for the Supreme Court with reference to the effect of an unconstitutional statute, said:

"That act was therefore as inoperative as if it had never been passed, for an unconstitutional act is not a law, and can neither confer a right or immunity nor operate to supersede any existing valid law."

In Security Savings Bank v. Connell, supra, the Supreme Court of Iowa considered a plea of res judicata in which the judgments relied upon were based upon laws later declared to be constitutional. In the course of that opinion it is said:

"If the decrees were merely erroneous, it may be concede the rule contended for would apply, and they would still be binding as adjudications of the matter then and now at issue, the right to deduct from the value of the shares of stock in the bank in arriving at the assessed value of the stock the amount of tax-exempt government obligations held by it. It is doubtless true, as argued by appellant, that the constitutionality of the statute in question could have been raised in the proceedings resulting in the decrees now relied upon as an estoppel; that it was as unconstitutional then as when so declared; and that it must be assumed it would have been so held had the question been then raised. But that contention does not fully meet the situation. Not only was the statute open to attack on con-

stitutional grounds at the time the prior decrees were ren-
[fol. 102] dered, but when it was by this court declared to be unconstitutional it ceased to be, as effectually as if it had never been passed."

Mr. Black, in his work on Judgments, Volume 1, Section 216, supra, states the applicable rule as follows:

"But if the alleged jurisdiction of a court to take any particular action is derived from a statute, and that statute is shown to be unconstitutional, the proceedings of the court must be considered void, for as the stream cannot rise higher than its source, no jurisdiction can be derived from a void act."

The rule laid down by this court in Woods Bros. Construction Co. v. Yankton County, 54 Fed. (2d) 304, is not in conflict. In that case, the jurisdiction of the court was not dependent upon the statute that had been declared unconstitutional after the entry of judgment. It was contended that the court had no jurisdiction to enter the original judgment. But we held that the court did have such jurisdiction. Here, the only authority of the bankruptcy court to act was dependent upon and derived from the statute which was declared by the Supreme Court to be unconstitutional. The decree entered was a nullity and constituted no defense to plaintiffs' action.

The judgment appealed from is therefore affirmed.

WOODROUGH, Circuit Judge, dissenting.

The appellant herein relies upon a judgment rendered by the District Court in a bankruptcy case during the interim between the time the Congress enacted the municipal corporations amendment to the Bankruptcy Act and the time the Supreme Court declared it unconstitutional. The question is, during that interim what was the state of our government in respect to that legislation? I assume that as to the acts of the Executive branch of the government founded thereon, they simply lost the sanction of the law when the law was held invalid. Probably the same is true as to administrative or quasi-judicial bodies. But it seems to me that our duly constituted courts, sitting in the various districts and circuits throughout the nation, function-

[fol. 103] ing in equity, law or bankruptcy, remained clothed with judicial power, including the power to pass on the constitutionality of the law and that their solemn judgments in all cases, including bankruptcy cases, ought to be given full faith and credit unless appealed from and reversed. The amendment to the Bankruptcy Act affected very large property rights. I think it ought not to be held that there was a hiatus of governmental power in respect to them, or that the Supreme Court decision annulling the amendment operated retroactively to render void the final unappealed from judgments of all the courts that had passed on the amendment and adjudicated rights between litigants in respect to it. It ought to be held that government by law is continuous at least in the courts of the nation.

[fol. 104] IN UNITED STATES CIRCUIT COURT OF APPEALS
EIGHTH CIRCUIT

No. 11342

CHICOT COUNTY DRAINAGE DISTRICT, Appellant

vs.

THE BAXTER STATE BANK and MRS. LENA S. SHIELDS

JUDGMENT

April 29, 1939.

Appeal from the District Court of the United States for the Eastern District of Arkansas.

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Eastern District of Arkansas, and was argued by counsel.

On Consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said District Court, in this cause, be, and the same is hereby, affirmed with costs; and that The Baxter State Bank and Mrs. Lena S. Shields have and recover against the Chicot County Drainage District the sum of Twenty Dollars for their costs herein and have execution therefor.

[fol. 105] IN UNITED STATES CIRCUIT COURT OF APPEALS
EIGHTH CIRCUIT

[Title omitted]

PETITION FOR REHEARING—Filed May 13, 1939

To the Circuit Court of Appeals for the Eighth Circuit, and the Judges Thereof:

Comes now the petitioner, Chicot County Drainage District, the appellant in the above entitled cause, and presents this, its petition for rehearing of the above entitled cause, and in support thereof respectfully shows:

That the court, in holding that the decree in the bankruptcy court entered March 28, 1936, was a nullity and constituted no defense to the plaintiff's action, inadver-
[fol. 106] tently overlooked two matters which, we submit, are important to a decision of this case, as follows:

1. The court inadvertently overlooked the fact that at the time the bankruptcy decree of March 28, 1936, was entered, courts of bankruptcy had jurisdiction of compositions.

2. The court inadvertently overlooked the fact that compositions by municipal taxing districts was a subject related to the general subject of bankruptcies and was one over which the Congress had power to legislate, and the act under which the bankruptcy decree was rendered was held unconstitutional, not because of the subject-matter of the act itself and not because Congress was without power to accomplish the desired result, but simply because of the manner in which Congress attempted to obtain the desired result.

I

The majority by their opinion overlooked the fact that at the time the bankruptcy decree was rendered courts of bankruptcy had jurisdiction of compositions.

In the opinion the majority say:

"The bankruptcy court rendering the decree here pleaded as res judicata was a court of limited jurisdiction. * * *. It had no jurisdiction of compositions. * * * Its jurisdiction was therefore wholly dependent upon the amendatory

act which was held to be unconstitutional in Ashton v. [fol. 107] Cameron County Water Improvement District, supra."

This statement indicates that the majority rested its decision upon the fact that courts of bankruptcy had no jurisdiction of compositions. This assumption is, we submit, an erroneous one, since very early in the history of bankruptcy legislation in this country courts of bankruptcy have been held to have jurisdiction over compositions.

Continental Illinois National Bank & Trust Company of Chicago v. Chicago, Rock Island & Pacific Railroad, et al., 294 U. S. 648, 79 L. Ed. 1110.

Section 73 of the Bankruptcy Act, U. S. C. A. Title II, Section 202, provides as follows:

"In adidtion to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors as provided in Sections 202, 203, and 205 of this chapter."

U. S. C. A. Title 11, Section 202, provides as follows:

"Any person excepting a corporation may file a petition, * * * stating that * * * he desires to effect a composition or an extension of time to pay his debts."

U. S. C. A. Title 11, Section 203, provides for agricultural compositions and extensions.

[fol. 108] U. S. C. A. Title 11, Section 205, provides for reorganization of railroads engaged in interstate commerce.

U. S. C. A. Title 11, Section 207, provides for the reorganization of any corporation.

The first three of the above acts were passed in 1933 and the last in 1934. It is plain therefore, that at the time the bankruptcy decree was rendered in 1936 courts of bankruptcy did have jurisdiction of compositions. In Continental Illinois National Bank & Trust Company v. Chicago, Rock Island & Pacific Railroad Co., 294 U. S. 648, L. Ed. 1110, the constitutionality of the provisions of the bankruptcy act for the composition of debts by railroads engaged in interstate commerce was questioned. The Supreme Court, speaking through Mr. Justice Sutherland, there said:

"As outlined by that section, a plan of reorganization, when confirmed, cannot be distinguished in principle from the composition with creditors authorized by the act of 1867, as amended by the act of 1874. It is not necessary to the validity of either that the proceedings should result in an adjudication of bankruptcy. The constitutionality of the old provision for a composition is not open to doubt. Re Reiman (D. C.) 7 Ben. 455, Fed. Cas. No. 11,673, cited with approval in Hanover Nat. Bank v. Moyses, 186 U. S. 181, 46 L. Ed. 1113, 22 S. Ct. 857, 8 Am. Bankr. Rep. 1, supra. That provision was there sustained upon the broad ground that the 'subject of bankruptcies' was nothing less than 'the subject of the relations between an insolvent or [fol. 109] non-paying or fraudulent debtor, and his creditors, extending to his and their relief.'"

The court further said, quoting from the case of Canada Southern R. Co. v. Gebhard, 109 U. S. 527, 27 L. Ed. 1020, 3 S. Ct. 363:

"'The confirmation and legalization of 'a scheme of arrangement' under such circumstances is no more than is done in bankruptcy when a 'composition' agreement with the bankrupt debtor, if assented to by the required majority of creditors, is made binding on the non-assenting minority. In no just sense do such governmental regulations deprive a person of his property without due process of law. They simply require each individual to so conduct himself for the general good as not unnecessarily to injure another.'"

We submit, therefore, that at the time the bankruptcy decree was entered, courts of bankruptcy did have jurisdiction of compositions and that the exercise of such jurisdiction at that time and since was frequent.

II

The majority by its opinion overlooked the fact that the purpose of the first municipal bankruptcy act was one which the Congress had the power to accomplish and that the only reason that purpose was not accomplished by said act was because of the manner in which the Congress sought to accomplish it.

[fol. 110] The majority by its opinion, after stating that courts of bankruptcy had no jurisdiction of compositions,

then stated that if the court acquired jurisdiction it was only because of the compliance with the act and "the act which purported to confer jurisdiction, being unconstitutional, was void and in legal contemplation was inoperative." Cases are cited to support this statement of law, and, as a general proposition, we concede that said statement is true. We submit, however, that that statement does not cover the situation here presented. The cases cited in support thereof do not pass upon the point in issue here. There is a vital distinction between the proposition here involved and that involved in the cases cited.

One of the cases cited by the court is that of Chicago, I. & L. Ry. v. Hackett, 228 U. S. 559, 57 L. Ed. 966. The court simply held in that case that the Federal Employers' Liability Act of June 11, 1906, being unconstitutional, did not supersede an Indiana statute dealing with the same question.

The case of Security Savings Bank v. Connell, 200 N. W. 8 (Iowa), also cited by the majority, involved the right of the bank to certain tax deductions under a legislative act, the bank pleading that although the act was unconstitutional, still a prior judgment against the bank in a prior year based the act was res judicata. The court merely held that the right to collect taxes was a separate and distinct right for each year and that the prior judgment was not res judicata in subsequent years. The court specifically passed over the question which was not there presented as to whether or not a judgment for the prior year was res [fol. 111] judicata for that year. In other words, whether or not the taxing authority could go back and retax for the year in which the judgment was rendered. That case, therefore, is not determinative of the question here presented.

The distinction which we believe should be made in cases of this sort is this: Where a court acts under the authority of a law which the legislative body has the power to enact, then in that case, we submit, the final unappealed from judgment of the court should be binding on the parties, whereas, if the court merely acts by virtue of legislation which it had no power to pass, then, in that event, the court's judgment should, of course, be void in its entirety. In other words, Congress did have power to pass a municipal bankruptcy act. This cannot be questioned, since it subsequently passed one which was held valid by the Supreme Court. The only reason the first act was unconstitutional was be-

cause it was held to be an interference by the government in purely local affairs. As construed by the court it would have permitted an unvoluntary petition. This defect was cured in the second act. The issue in the Ashton case was a narrow one and the act was held unconstitutional by a five to four decision. Congress, in passing the first municipal bankruptcy act, was legislating upon a subject upon which it had the power to legislate. This was recognized in the Ashton case. It could have accomplished the purpose it desired to accomplish in the first act had that act been properly worded. The difference between the first and second municipal bankruptcy acts is very slight. We believe there is a distinction where a court acts by virtue of such legislation and where a court acts under the authority of a statute, the result of which could never by any means be reached under constitutional authority.

[fol. 112] In the first case there is power in Congress to confer jurisdiction and an attempt so to do, whereas in the latter case Congress merely attempts to usurp a power it does not possess. It is submitted that this distinction is a valid one, and that where a court acts under such a statute it is acting within its jurisdiction and its judgment therein cannot be impeached collaterally.

This court, in the case of McWilliams v. Blanchard, 96 Fed. (2d) 43, C. C. A. 8, 1938, made the following statement:

"Whatever may the nature of a question presented for judicial determination—whether depending on Federal, general, or local law—*it if* be embraced by the issues made, its determination by a court having jurisdiction of the parties and of the subject-matter binds the parties and their privies so long as the judgment remains unmodified or unreversed. Mitchell v. First Nat. Bank of Chicago, 180 U. S. 471, 481, 21 S. Ct. 418, 422, 45 L. Ed. 627.

"Whenever the right and the duty of a court to exercise its jurisdiction depends upon the decision of a question it has power to hear and determine, its judgment, right or wrong, is binding upon the parties and those in privity with them. Foltz v. St. Louis & San Francisco Ry. Co., 8 Cir., 60 F. 316, 319; Thompson v. Terminal Shares, 8 Cir., 89 Fed. 2d 652, 655; Wilcons v. Penn Mutual Life Ins. Co., 10 Cir., 91 F. 2d 317, 319. The power to decide includes the power to decide erroneously. Simonitsch v. Bruce, 8 Cir., 258 F. 331, 333; Jack v. Hood, 10 Cir., 39 F. 2nd 594, 595."

[fol. 113] Using that statement as the rule to be applied in this case, the following conclusion is reached: The right of the district court to exercise its jurisdiction in the bankruptcy case depended upon the decision of the constitutionality of the first municipal bankruptcy act. It had the right and power to hear and determine that issue and, according to the rule stated in the above case, that decision is binding upon the parties whether it be right or wrong. In other words, the district court in rendering the decree of March 28, 1936, decided that the municipal bankruptcy act was constitutional, and, having decided that question, rendered the decree. That court had the power to decide upon the constitutionality of that statute, for, if it did not, then there would be no way to determine the validity of the legislation.

There is another element in this case which we believe was overlooked by the majority. Suppose, for instance, that the plaintiffs in this case had appeared in the bankruptcy proceeding and resisted the petition on the ground that the district was not insolvent or that the proposed composition or reorganization was unfair; and suppose, further, that they did not in the district court raise any question as to the constitutionality of the bankruptcy act. Had they then taken an appeal after the district court rendered its decree of March 28, 1936, we do not believe that the Circuit Court of Appeals would have passed upon the constitutionality of the act. That question, not having been raised in the lower court, could not be raised upon appeal.

Wong Tai v. U. S., 273 U. S. 77, 47 Sup. Ct. 300, 71 L. Ed. 545.

[fol. 114] New York ex rel Rosedale Realty Co. v. Kleinert, 268 U. S. 646, 45 Sup. Ct. 618, 69 L. Ed. 1135.

An appeal could then have been taken to the Supreme Court of the United States with the same result. Had the two appellate courts affirmed the trial court, then certainly these plaintiffs would be bound by that decision, and even though later in a subsequent case where the constitutional issue was raised the Supreme Court held the act unconstitutional, still, in that instance it would not relate back and enable these plaintiffs to recover the full face amount of their bonds. In such an instance we do not believe there would even be any contention made that the bankruptcy

decree was wholly void, and therefore could not be pleaded as res judicata.

We cannot conceive of any reason why these plaintiffs should be any better off for not having appeared and appealed from the decree than they would have been had they taken such action. To so hold is to allow the plaintiff to do indirectly that which they could not have done directly.

We accordingly respectfully submit that a rehearing should be granted and that the cause should be reversed and remanded for a new trial.

Respectfully submitted, James R. Yerger, Lake Village, Arkansas. Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr., Little Rock, Arkansas, Attorneys for Appellant.

[fol. 115] *Duly sworn to by E. L. McHaney, Jr. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 116] IN UNITED STATES CIRCUIT COURT OF APPEALS

ORDER MODIFYING OPINION AND DENYING PETITION OF APPELLANT FOR A REHEARING—May 18, 1939

On consideration of the petition for a rehearing filed by counsel for appellant, It is ordered that the opinion of this Court, be, and is hereby, modified by striking out and eliminating therefrom the sentence appearing on page 3 of the printed opinion reading as follows: "It had no jurisdiction of compositions." and substituting in lieu thereof the following: "Its powers of compositions were fixed and limited by statute."

The petition for rehearing is hereby denied.

IN UNITED STATES CIRCUIT COURT OF APPEALS

MOTION OF APPELLANT FOR STAY OF ISSUANCE OF MANDATE—Filed May 22, 1939

Comes the appellant, Chicot County Drainage District, and moves the court to stay the issuance of mandate in

the above entitled cause under the provisions of Rule 19, and for cause states:

That the appellant intends to apply to the Supreme Court of the United States for a Writ of Certiorari to review the decision of this court.

Wherefore, appellant prays that this court stay the mandate for a period of thirty days, pending such application as provided in said rule.

Grover T. Owens, S. Lasker Ehrman, E. L. McHaney, Jr.

[fol. 117] In United States Circuit Court of Appeals

[File endorsement omitted]

Order Staying Issuance of Mandate—May 24, 1939

On Consideration of the motion of appellant for a stay of the mandate in this cause pending a petition to the Supreme Court of the United States for a writ of certiorari, It is now here ordered by this Court that the issuance of the mandate herein be, and the same is hereby, stayed for a period of thirty days from and after this date, and if within said period of thirty days there is filed with the Clerk of this Court a certificate of the Clerk of the Supreme Court of the United States that a petition for writ of certiorari, record and brief have been filed, the stay hereby granted shall continue until the final disposition of the case by the Supreme Court.

[fol. 118] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 119] Supreme Court of the United States

Order Allowing Certiorari—Filed October 9, 1939

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied

the petition shall be treated as though filed in response to such writ.

Mr. Justice Butler took no part in the consideration and decision of this application.

[Endorsed:] File No. 43,529 U. S. Circuit Court of Appeals, Eighth Circuit, Term No. 122 Chicot County Drainage District, Petitioner, vs. The Baxter State Bank and Mrs. Lena S. Shields. Petition for a writ of certiorari and exhibit thereto. Filed June 19, 1939. Term No. 122 O. T., 1939.

FILE COPY

IN THE

Supreme Court of The United States

OCTOBER TERM, 1938

NO. 122

CHICOT COUNTY DRAINAGE DISTRICT.....*Petitioner*

v.

THE BAXTER STATE BANK AND
MRS. LENA S. SHIELDS, ...*Respondents*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

JAMES R. YERGER,
GROVER T. OWENS,
S. LASKER EHRMAN,
E. L. MCHANEY, JR.
Counsel for Petitioner.

PARAGON PRINTING CO., LITTLE ROCK

INDEX

Subject Index

TABLE OF CASES CITED

STATUTES CITED

IN THE

Supreme Court of The United States

OCTOBER TERM, 1938

No. ———

CHICOT COUNTY DRAINAGE DISTRICT.....*Petitioner*

THE BAXTER STATE BANK AND

v.

MRS. LENA S. SHIELDS, ...*Respondents*

PETITION FOR WRIT OF CERTIORARI.

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The petition of Chicot County Drainage District respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED.

The petitioner, Chicot County Drainage District, is a local improvement district located in Chicot County, Arkansas. The respondents are the owners of fourteen bonds in the face amount of $1,000.00 each, issued by the District in 1924.

On June 17, 1935, the District filed a petition in the United States District Court for the Western Division of the Eastern District of Arkansas, wherein it asked for authority to effect a plan of readjustment of its indebtedness (Defendant's Finding of Fact No. 3, R. 84). This action was entitled "In the Matter of Chicot County Drainage District, Bankrupt," and was cause number 4357 in said court. It will be referred to hereafter as the bankruptcy case. It was filed under authority of the First Municipal Bankruptcy Act, 48 Stat. at L. 798, Chapter 345, Paragraph 1 (U. S. C. A. Title 11, Paragraph 303). The provisions of the act were fully complied with (Defendant's Finding of Fact No. 5, R. 84). Respondents had actual notice of the proceedings (Defendant's Finding of Fact No. 4, R. 84). On March 28, 1936, the District Court entered a final decree in the above-mentioned bankruptcy case, approving the plan of debt readjustment (R. 53). Said decree, after providing for a discharge of the District's indebtedness for about 36c on the dollar, provides, in part, as follows:

> "(c) That all the old bonds and other obligations of the petitioning District affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever

therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof;" (R. 57).

Bondholders of the District holding $705,087.06 face amount of said bonds accepted the proposed plan of debt readjustment and were paid off in accordance with said plan. The holders of $57,449.37 face amount of bonds had not, at the time the final decree was entered, accepted said plan and the District was required to deposit with the clerk of the court the sum of $20,603.10 in order that the clerk might pay said bonds when they were deposited with him for that purpose (R. 53-58). The fourteen bonds represented in the present suit are part of those which were not deposited in accordance with the plan. Neither of the respondents appealed from said decree (Defendant's Finding of Fact No. 9, R. 86).

Thereafter, and on May 25, 1936, this court, in the case of *Ashton v. Cameron County Water Improvement District*, 298 U. S. 513; 56 Sup. Ct. 892, 80 L. Ed. 1309, held that the First Municipal Bankruptcy Act was unconstitutional.

On July 24, 1937, sixteen months after the bankruptcy decree and fourteen months after the decision in the Ashton case, the respondents instituted this action, seeking judgment against the petitioner for the full face amount of their fourteen bonds, together with all past due interest (R. 3-5). The District pleaded as res judicata the final decree of the District Court in the bankruptcy case hereinbefore mentioned (R. 6-13). On June 2, 1938, the Dis-

trict Court rendered judgment in favor of the respondents for the full amount prayed in the complaint (R. 14-15).

In the meantime, and on the 16th day of August, 1937, the Second Municipal Bankruptcy Act became a law, 50 Stat. at L. 654, Chapter 657, (U. S. C. A. Title 11, Section 401); and on the 25th day of April, 1938, this court, in the case of *United States* v. *Bekins, et al*, 304 U. S. 27; 58 Sup. Ct. 811, 82 L. Ed. 1137, held that said act was constitutional and valid.

The case was appealed to the Circuit Court of Appeals for the Eighth Circuit, and on April 29, 1939, said court affirmed the judgment of the District Court (R. 97-101), Judge Woodrough dissenting (R. 101). Petition for rehearing was denied on May 18, 1939 (R. 115).

The Honorable Circuit Court of Appeals, in its opinion, stated: "The decree entered was a nullity and constituted no defense to plaintiff's action." (R. 101).

The petitioner takes the position that the aforesaid holding, to the effect that the decree entered in the bankruptcy case is void, is erroneous and untenable. It is submitted that at the time the bankruptcy decree was entered the District Court had jurisdiction; that said decree is valid and binding; that it is not subject to collateral attack; and that it is res adjudicata of the issues involved in this case.

B.

BASIS UPON WHICH THIS COURT HAS JURISDICTION.

Jurisdiction to issue the writ requested is found in Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Chapter 229, Section 1, 43 Stat. 938, 28 U. S. C. A., Section 347(a).

The following cases sustain the jurisdiction of this court in this case:

Magnum Import Co., v. *Coty*, 262 U. S. 159; 43 S. Ct. 531, 67 L. Ed. 922;

National Labor Relations Bd. v. *Mackay Radio & Teleg. Co.*, 304 U. S. 333, 58 S. Ct. 904, 82 L. Ed. 1381;

Gay v. *Ruff*, 292 U. S. 25, 30; 78 L. Ed. 1098, 1104 (1933).

C.

THE QUESTIONS PRESENTED.

The only question presented by this petition is whether a judgment of a United States District Court rendered in pursuance to a petition filed by a local improvement district under and by virtue of the First Municipal Bankruptcy Act, 48 Stat. at L. 798, Chapter 345, Paragraph 1, (U. S. C. A. Title 11, Paragraph 303), prior to the time this court held said act to be unconstitutional, is valid and binding as against a party to said action where no appeal has been taken from said decree and no motion or other proceeding had to vacate same.

This question, for the purpose of argument, is divided into two sub-divisions, as follows: A, whether the bankruptcy decree was wholly void; and, B, whether the constitutional objections which existed in the Ashton case were present in the bankruptcy case here involved, and whether, if present, respondents could have raised them on direct appeal from the bankruptcy decree.

D.

REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

The Honorable Circuit Court of Appeals for the Eighth Circuit has rendered a decision which, it is submitted, is erroneous and which involves an important question of federal law which has not been settled by this court, and which is of sufficient importance that this court should definitely settle said issue.

PRAYER FOR WRIT.

WHEREFORE, your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Honorable Court, directed to the Honorable Circuit Court of Appeals for the Eighth Circuit, at St. Louis, demanding that court to certify and send to this court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered 11,342 At Law on its docket and entitled "Chicot County Drainage District, Appellant, v. The Baxter State Bank and Mrs. Lena S. Shields, Appellees" and that the said judgment of said court may be reversed by this Honorable Court, and that

your petitioner may have such other relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

CHICOT COUNTY DRAINAGE DISTRICT,

By.....

JAMES R. YERGER,
Lake Village, Arkansas,

.....

GROVER T. OWENS,

.....

S. LARKER EHRMAN,

.....

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Little Rock, Arkansas
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vs.

THE BAXTER STATE BANK AND
MRS. LENA S. SHIELDS, *Respondents*

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinions in the Court of Appeals for the Eighth Circuit have not been reported. The opinion of the majority is found in the record at pages 97 to 101, and the dissenting opinion at page 101.

II.

Statement of the Case.

The statement given in the petition under the heading "Summary Statement of the Matter Involved" is, we be-

lieve, a sufficient statement of the case and will, therefore, not be repeated here.

III.

Specifications of Errors.

1. The lower court erred in holding that the decree of the United States District Court for the Eastern District of Arkansas, Western Division, under date of March 28, 1936, was void and did not constitute a defense to this action.

IV.

Summary of Argument.

THE COURT BELOW HAS ERRONEOUSLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN SETTLED BY THIS COURT AND WHICH IS OF SUFFICIENT IMPORTANCE THAT THIS COURT SHOULD DEFINITELY SETTLE SAID ISSUE.

A.

THE BANRUPTCY DECREE WAS NOT WHOLLY VOID.

B.

THE CONSTITUTIONAL OBJECTIONS WHICH EXISTED IN THE ASHTON CASE WERE NOT PRESENT IN THE BANKRUPTCY CASE AT ISSUE HERE, AND EVEN IF SAID OBJECTIONS WERE PRESENT THE RESPONDENTS COULD NOT HAVE RAISED THEM UPON DIRECT APPEAL.

ARUGMENT.

Point One.

THE COURT BELOW HAS ERRONEOUSLY DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN SETTLED BY THIS COURT AND WHICH IS OF SUFFICIENT IMPORTANCE THAT THIS COURT SHOULD DEFINITELY SETTLE SAID ISSUE.

A.

The Bankruptcy Decree Was Not Wholly Void.

The court below has held in this case that a decision of a United States District Court in a case filed pursuant to the First Municipal Bankruptcy Act, 48 Stat. at L., 798, Chapter 345, U. S. C. A. Title 11, Paragraph 303, was void and subject to collateral attack, even though that decision was rendered prior to the time said First Municipal Bankruptcy Act had been declared unconstitutional, and even though no appeal was taken from said decree and no motion or proceeding of any kind or nature was taken in the court rendering the decree to have it set aside. Furthermore, in the proceedings in the District Court culminating in the decree of March 28, 1936, no constitutional issues were raised, and had an appeal been taken from that decree, under the well settled doctrine of this court the constitutional issues could not have been raised upon appeal. *Wong Tai* v. *U. S.*, 273 U. S. 66, 47 S. Ct. 300, 71 L. Ed. 545.

Counsel have been unable to find that this precise question has ever been decided by this court, and the ques-

tion is, we submit, of sufficient importance that it should be definitely settled by this court.

The First Municipal Bankruptcy Act became a law as an amendment to the Bankruptcy Act of 1898 on May 24, 1934. It was not declared unconstitutional by this court until May 25, 1936. During the two years that this law was on the statute books there were undoubtedly a great number of cases instituted by improvement districts for the purpose of effecting a composition of debt. The case of Chicot County Drainage District is one instance. Undoubtedly there are many more. The question at issue is the status of decrees rendered during this interim. Shall a mere technicality in the wording of the act be allowed to nullify all the proceedings taken thereunder? Undoubtedly Congress had the power to effect the purposes of the act. This cannot be disputed.

United States v. *Bekins, et al,* 304 U. S. 27, 58 S. Ct. 811, 82 L. Ed. 1137 (1938).

The subject treated in the act was related to the general subject of bankruptcies. The fact that under the wording of the first act an involuntary petition in bankruptcy might have been filed against a political subdivision of a state was held sufficient to render the act unconstitutional.

Ashton v. *Cameron County Water Improvement District,* 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309 (1936).

This defect in the wording of the act was cured by Congress when it enacted the Second Municipal Bankrupt-

cy Act, which was subsequently held constitutional by this court. *United States* v. *Bekins, supra.*

It is submitted that under these circumstances, where a United States District Court grants relief and enters a final decree, such final decree is binding upon the parties to it in the absence of an appeal, even though thereafter the act was held to be unconstitutional. The constitutional question arose in an entirely separate and distinct action.

The fact that a petition was filed in the United States District Court praying relief under an act of Congress which authorized the District Court to grant such relief imposed upon the court the duty to decide the following questions: First, whether or not it had jurisdiction to decide the matter in controversy; and, second, whether or not a cause of action was stated upon which relief could be granted. The determination of either of these questions was an exercise of jurisdiction by the District Court and binding upon the parties in the absence of an appeal. The mere fact that, in passing upon these issues, the court was called upon to determine the constitutionality of an act of Congress does not divest it of jurisdiction. The court held, inferentially at least, that the act was valid and this adjudication should be binding on the parties to the action in the absence of an appeal.

See:

Louisville Trust Co. v. *Cominger*, 184 U. S. 18, 26, 22 S. Ct. 293, 46 L. Ed. 413 (1902).

This court, in the case of *Dowell* v. *Applegate*, 152 U. S. 327, 14 S. Ct. 611, 38 L. Ed. 463 (1893), said in passing upon the validity of a decree of a Federal Circuit Court:

"Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise than on writ of error or appeal to this court."

There can be no question as to the service in the bankruptcy case. The creditors of the District were served by publication of warning orders and by notice through registered mail to each of them (R. 84). The plaintiff in this case actually received these notices and had actual notice of the pendency of the suit (R. 84). Neither of them, however, appeared in said action or attempted in any way to contest the validity of the proceedings (R. 86). This method of obtaining service in bankruptcy proceedings has been upheld.

In re Greyling Realty Corporation, 74 Fed. (2d) 734; Cert. den. 294 U. S. 725, 55 Sup. Ct. 639, 79 L. Ed. 1256.

In the case of *Hartford Life Insurance Company* v. *Johnson*, 268 Fed. 30 (1920), the court made this statement:

"It is true the jurisdictional allegations of a complaint may be put in issue by proper plea, but even in such a case the court in deciding such a plea exercises jurisdiction. Even if it sustains its jurisdiction erroneously, the judgment is not subject to collateral attack, although cause for reversal upon appeal."

It is submitted that there is a distinction in cases where a federal district court exercises its jurisdiction in a cause where Congress can legally bestow such jurisdiction upon

the district court, and has ineffectively attempted to do so, and cases where under no circumstances could Congress confer jurisdiction upon the district courts. An illustration might clarify this distinction. Suppose, for instance, that Congress passed an act granting to the district courts jurisdiction of all cases involving over $500.00 where diversity of citizenship exists; and suppose further that in the process of enacting such an act Congress failed to comply with all the technical requirements necessary to passage. If, after the federal district courts had exercised jurisdiction under such an act for several years, the Supreme Court of the United States, in a case properly before it, should hold the act invalid on account of its improper passage in Congress, we do not believe such a decision would have the effect of nullifying the judgments theretofore rendered under the act. We believe that parties to any litigation filed under the act would be bound by the judgments in the absence of an appeal.

To take another example, suppose that a case should now reach the Supreme Court involving the validity of the Federal Interpleader Statute, Section 24, Sub-section 26, of the Judicial Code, as amended, U. S. C. A. Title 28, Section 41 (26); and suppose that this court should hold for some reason that said section of the code was invalid. We submit that such a holding would not make void all prior judgments rendered by the Federal District Courts exercising jurisdiction by virtue of said section of the code. We submit that said judgments would not be subject to collateral attack and that any parties to said proceedings who were served in accordance with the provisions

of the act would be bound by the judgments therein rendered in the absence of an appeal.

The same question is presented in the case at bar. Congress admittedly had the power to give to the district court jurisdiction over compositions by municipalities and improvement districts. Congress attempted to confer this power, and the Federal District Court for the Eastern District of Arkansas acted in reliance thereon. At that time the act stood unimpeached. If the respondents believed that the District Court was acting in excess of its jurisdiction they should have presented their objections to that court. This case is, we submit, entirely different from those cases in which courts act in excess of their jurisdiction without any color of right.

It is also submitted that the validity or invalidity of the First Municipal Bankruptcy Act was a question which affected primarily the merits of the cause of action, and not the jurisdiction of the court. In other words, if the statute was constitutional, then the District, in the bankruptcy case, stated a good cause of action in its petition. If it was not, no cause of action was stated. In either event, we submit, the district court had jurisdiction to pass upon the issues involved. The Chicot County Drainage District is a corporate entity and may sue and be sued in the courts. Act 405, Section 5, of the Extraordinary Session of the Forty-Second General Assembly of the State of Arkansas, approved February 25, 1920. It brought an action in the District Court of the United States against all its creditors, in which action it asked that a plan of reorganization submitted by it be approved by the court, and that

after such approval the creditors of the District be compelled to surrender their obligations against the District and receive in return therefor the benefits provided under the plan of reorganization. The district court, even in the absence of statute, could have granted all the relief asked, except that it could not compel a dissenting creditor to exchange his obligations against the District for the benefits provided in the plan of reorganization. The validity of the First Municipal Bankruptcy Act in such a case is, therefore, a question which goes to the merits of the cause of action stated, and not one which goes to the jurisdiction of the court. As said by the Circuit Court of Appeals for the Eighth Circuit in the case of *Woods Bros. Construction Co.* v. *Yankton County*, 54 Fed. (2d) 304, (1931):

> "It is not necessary that the right asserted be based upon a valid law. That question goes to the merits of the action and not to the jurisdiction of the court."

Our argument on this point is aptly stated by the Supreme Court of Wisconsin in the case of *Arnold* v. *Booth*, 14 Wis. 180 (1861). The court said:

> "Obviously the cause of action in the suit of Garland against Booth was a penalty given by the Fugitive Slave Law for a violation of its provisions. But whether there was any law in existence giving this right of action, and, if so, whether the law was valid and binding, were legitimate matters of consideration for the district court, as was the question of its violation. The court might have held that there was no cause of action because the law was void. It had jurisdiction of the case thus to decide. This it seems

to me is incontestable. I do not wish to be understood as saying that a court may give itself jurisdiction by deciding that it has it, or that other courts would be concluded by such a decision when that question came before them. For this would be merely holding that the exercise of power by a court proved the rightful exercise of such power—a proposition for which no one would probably contend. I am endeavoring to make obvious to others, what is plain to my own mind, namely, that the question arising upon the record offered in evidence is not really one going to the jurisdiction of the district court, but one touching the question as to whether in fact there was any cause of action. If I am right in this view of the case, it would then follow that the decision of that court holding that a good cause of action existed, however erroneous, must be binding until reversed."

"* * * It seems to me that it is analogous in principle, and that the same rule must apply here that is held to apply in cases where the jurisdiction of a court extends over a class of cases but the court gives judgment in a particular case where the facts and law do not authorize it."

This court, in the case of *Rooker* v. *Fidelity Trust Co.*, 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923), made the following statement, which is applicable to the issues here:

"If the constitutional questions stated in the bill actually arose in the cause, it was the province and duty of the state courts to decide them; and their decision whether right or wrong, was an exercise of

jurisdiction. If the decision was wrong, that did not make the judgment void, but merely left it open to reversal or modification in an appropriate and timely appellate proceeding. Unless and until so reversed or modified, it would be an effective and conclusive adjudication."

The cases upon which the Circuit Court of Appeals relied in deciding this case are not in point. Main reliance apparently is placed upon the cases of *Chicago, I. & L. R. Co.* v. *Hackett*, 228 U. S. 559, and *Security Savings Bank* v. *Connell* (Ia.), 200 N. W. 8 (R. 100). The first of the above cited cases involved the question as to whether the first Federal Employers' Liability Act of June 11, 1906, superseded an Indiana statute dealing with the same subject-matter as the Federal Act. The court merely held that the Federal Employers' Liability Act, being unconstitutional, did not supersede the State Statute. The excerpt from the court's opinion quoted in the opinion of the Circuit Court of Appeals when standing alone and unexplained is apparently a very damaging statement of law, but when the entire case is read, it is apparent that the case is not in point.

The second of the above cited cases, with due deference to the Court of Appeals, is more favorable to petitioner's case than to the respondent. That case involved the basis upon which certain bank stock should be assessed for taxation. The bank contended that the value of certain United States Liberty Bonds should be deducted in determining the value of the shares of the capital stock of the company for purposes of taxation, and relied upon a judgment to that effect involving the same question in a

prior year. In reply it was shown that the statute which was the basis of the prior adjudication had since been held invalid. The court merely held that the basis of taxation might change from year to year and that the prior judgment was not res judicata in a subsequent year. The court said:

> "To meet the contention of appellant, it is not necessary to hold that the former decrees are void for all purposes. No such question is before us."

The court therefore held inferentially that the prior judgment was binding as to the tax due in the year covered by the judgment, even though based on an unconstitutional act.

The Honorable Circuit Court of Appeals in its opinion further said:

> "* * * It is sufficient for the purpose of this opinion to state that the proceeding taken was that prescribed by the statute, and if the court acquired jurisdiction, it was because of a compliance with the procedure so prescribed, and not otherwise.
>
> "If the decree was void, it could not be successfully pleaded as res judicata. *McDonald* v. *Mabee*, 243 U. S. 90. The act which purported to confer jurisdiction, being unconstitutional, was void and in legal contemplation was inoperative."

We respectfully submit that this statement begs the question. It is true that the statute conferring jurisdiction was unconstitutional, but said statute was not unconstitutional because Congress did not have power to confer

jurisdiction in the district courts in such cases, but because, as the court held in the Ashton case, the act as worded was an unlawful interference with State's rights, as applied in the Ashton case.

The act itself purported to confer jurisdiction, and when the Chicot County Drainage District filed its petition in the original bankruptcy case, it stated that it was filing same under the authority of said act. (R. 19). In determining its jurisdiction and in determining the District's right to relief, the district court, in the bankruptcy case, necessarily passed upon the validity of the statute which was the basis of the action. This determination was an exercise of jurisdiction. The court decided that issue, and by rendering its decree on March 28, 1936, held that the act was valid.

This adjudication, we submit, is final and binding upon the respondents in the absence of any appeal therefrom.

B.

THE CONSTITUTIONAL OBJECTIONS WHICH EXISTED IN THE ASHTON CASE WERE NOT PRESENT IN THE BANKRUPTCY CASE AT ISSUE HERE, AND EVEN IF SAID OBJECTIONS WERE PRESENT, THE RESPONDENTS COULD NOT HAVE RAISED THEM UPON DIRECT APPEAL.

Under Point A above we have argued that the decree in the bankruptcy case was not wholly void, that it is not subject to collateral attack, and that it is res judicata of every issue in this case.

To say the least, the respondents can go no further by collateral attack on said bankruptcy decree than they could have gone by direct appeal, and it is submitted that had these respondents taken an appeal from the bankruptcy decree of March 28, 1936, said decree would have been affirmed.

In the first place, the unconstitutionality of the statute must be especially pleaded, and the failure so to do would constitute a waiver of any defense on that ground.

Wong Tai v. *U. S.*, 273 U. S. 77, 47 S. Ct. 300, 71 L. Ed. 545;

New York Ex Rel v. *Kleinert*, 268 U. S. 646, 45 S. Ct. 618, 69 L. Ed. 1135.

The respondents filed no pleading in the district court at the time the bankruptcy proceedings were had. Therefore, under the well established rules of this court, no constitutional questions could have been argued upon appeal.

Furthermore, the status of Chicot County Drainage District is quite different from that of Cameron County Water Improvement District No. 1, and for this reason it is very questionable whether, had respondents appealed from the bankruptcy decree, a ruling could have been secured upon the constitutionality of the First Municipal Bankruptcy Act. The act by its terms applied "to any municipality or other political sub-division of any state, including (but not hereby limiting the generality of the foregoing) any county, city burrough, village, parish, town or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee,

sewer, or paving, sanitary, port, improvement, or other districts."

U. S. C. A. Title 11, Section 303(a), Sub-section (1) of said section is the separability clause and reads as follows:

> "If any provision of this chapter *or the application thereof to any person* or circumstances is held invalid, the remainder of the chapter, *or the application of such provision to other persons* or circumstances, shall not be affected thereby." (italics ours).

The decision in the Ashton case is based upon the finding that Cameron County Water Improvement District No. 1 was a political sub-division of the state. The court said:

> "It is plain enough that respondent is a political sub-division of the state, created for the local exercise of her sovereign powers and that the right to borrow money is essential to its operations. * * * Its fiscal affairs are those of the state not subject to control or interference by the national government unless the right so to do is definitely accorded by the federal constitution."

The situation of Chicot County Drainage District is entirely different. This district is not a political sub-division of the State of Arkansas, and the objection to the act which was raised in the Ashton case probably would not have arisen in the bankruptcy case here had it been appealed.

In the case of *Drainage District No. 7 of Poinsett County* v. *Hutchins*, 184 Ark. 521, 530, 42 S. W. (2d) 996, 1,000, the Supreme Court of Arkansas defined drainage districts as "the agent of the property owners in the district whose interests are affected by the duties they perform. They exercise no governmental powers except those expressly or impliedly granted by the Legislature. They are not political or civil divisions of the state like counties and municipal corporations created to aid in the general administration of the government. They are not created for political purposes or for the administration of civil government."

See also:

In re Drainage District No. 7 of Poinsett County, Arkansas, 21 Fed. Sup. 798, 803.

The First Municipal Bankruptcy Act was not, therefore, unconstitutional as applied to Chicot County Drainage District of Chicot County, Arkansas. It does not, as applied to this district, interfere with any rights of the State of Arkansas or of any of its political sub-divisions.

The constitutional question which was raised in the Ashton case and which was held to be sufficient to make the act unconstitutional probably could not have been raised in this case had an appeal been taken from the bankruptcy decree.

See:

Iroquois Transp. Co. v. *De Laney Forge & Iron Co.*, 205 U. S. 354, 360; 51 L. Ed. 836, 840 (1907);

Champlin Refining Co. v. *Corporation Comm.*, 286 U. S. 210, 234, 235, 238; 76 L. Ed. 1062, 1078, 1080 (1932);

Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8, 22; 76 L. Ed. 136, 145 (1931);

Utah Power & Light Co. v. *Pfast*, 286 U. S. 165, 186; 76 L. Ed. 1038, 1049 (1932);

Henneford v. *Silas Mason Co.*, 300 U. S. 577, 583; 81 L. Ed. 814, 819 (1937);

Young v. *McNeal-Edwards Co.*, 283 U. S. 398, 400; 75 L. Ed. 1140, 1141 (1931).

We do not suggest that this court should retry the bankruptcy case upon its merits. We merely suggest that had an appeal been taken from the bankruptcy decree which has been pleaded as res judicata, the appellate court might have been required under the facts of said case to affirm the judgment of the trial court. This suggestion is made to demonstrate the serious import of the decision of the lower court to the effect that when the Supreme Court of the United States handed down its decision in the Ashton case ipso facto, all judgments rendered under the First Municipal Bankruptcy Act were void in toto.

CONCLUSION.

It is therefore respectfully submitted that this case is one calling for the exercise by this court of its supervisory powers in order that the judgment of the Honorable Circuit Court of Appeals for the Eighth Circuit may be reviewed, and for such purpose petitioner prays that Writ of Certiorari issue to said court, and, on final hearing, the judgment of said court be reversed and the cause remanded to the District Court.

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Counsel for Petitioner.

FILE COPY

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No. 122

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v.

THE BAXTER STATE BANK AND
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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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SUPPLEMENTAL BRIEF

In our brief in support of the petition we argued on pages 22 to 24 that the First Municipal Bankruptcy Act was valid insofar as its application to Chicot County Drainage District was concerned. On page 24 of our brief we cited the case of In Re Drainage District No. 7 of Poinsett County, Arkansas, 21 Fed. Sup. 798, this case being a decision by the United States District Court. Since our brief was filed the Circuit Court of Appeals for the Eighth Circuit handed down an opinion on appeal of the above cited case. This opinion is reported under the style of Luehrmann v. Drainage District No. 7 of Poinsett County, Arkansas, 104 Fed. (2d) 696. This opinion by the Circuit Court of Appeals brings out the contention of petitioner very clearly.

In that case an attack had been made upon the constitutionality of the Second Municipal Bankruptcy Act, 50 Stat. 654, 11 U. S. C. A., paragraphs 401-404, and in sustaining the constitutionality of the act as applied to the case at issue, the court pointed out the difference between Drainage District No. 7 of Poinsett County, Arkansas, and the Water Improvement District which was involved in the case of Ashton v. Cameron County Water Improvement District, 298 U. S. 513; 56 S. Ct. 892, 80 L. Ed. 1309. The court pointed out that the Drainage District did not fall within the limitation of the bankruptcy power, which limitation was declared in the Ashton case, to-wit, that as applied to the district in question, it constituted an interference with the fiscal affairs of the state.

The status of Drainage District No. 7 of Poinsett County, Arkansas, is identical to that of Chicot County

Drainage District of Chicot County, Arkansas. They were both created for drainage purposes and both have the same inherent powers. Under the decisions of the Supreme Court of Arkansas hereinbefore cited, neither is a political sub-division of the State of Arkansas, and therefore the reasoning behind the decision in the Ashton case would not apply to either of these districts.

In Point "A" of our brief it was argued that when Chicot County Drainage District filed its petition in the United States District Court under the First Municipal Bankruptcy Act, the court was called upon to decide, first, whether or not it had jurisdiction to decide the matter in controversy, and, second, whether or not a cause of action was stated upon which relief could be granted, and that the determination of either of those questions was an exercise of jurisdiction and binding upon the parties in the absence of an appeal. In other words, the judgment of that court became res judicata. We failed to cite a recent decision of this court which, we submit, supports our position. The case of *Stoll* v. *Gottlieb*, 305 U. S. 165, 83 L. Ed. 116, decided November 21, 1938, involved the conclusiveness of an order of the United States District Court releasing the guarantor from his obligations in a proceeding under Section 77(b) of the Bankruptcy Act. The Supreme Court of the State of Illinois had refused to recognize the binding effect of the order of the United States District Court on the theory that the court was without jurisdiction to render the order in question. On writ of certiorari to this court, the decision of the Supreme Court of Illinois was reversed. In an opinion delivered by Mr. Justice Reed, the court said:

"A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creators. There must be admitted, however, a power to interpret the language of the jurisdictional instrument and its application to an issue before the court. * * * After a Federal court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of res judicata is made has not the power to inquire again into that jurisdictional fact. * * * *"*

"* * * It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined."

It is submitted that the above case is directly in point with the issue to be decided in the case at bar.

Respectfully submitted,

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

CHICOT COUNTY DRAINAGE DISTRICT ..... *Petitioner,*

v. No. 122

THE BAXTER STATE BANK AND
MRS. LENA S. SHIELDS ..... *Respondents.*

BRIEF FOR PETITIONER, CHICOT COUNTY DRAINAGE DISTRICT

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INDEX

TABLE OF CASES CITED

TEXT BOOKS

STATUTES CITED

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BRIEF FOR PETITIONER, CHICOT COUNTY DRAINAGE DISTRICT

A.

B.

OPINIONS BELOW

Opinion of the District Judge is not reported. It consists only of findings of fact and conclusions of law (R. 74-79). Opinion of the Circuit Court of Appeals, Judge Gardner, appears in 103 Fed. (2d) 847 (R. 85), and the dissenting opinion of Judge Woodrough appears 103 Fed. (2d) 849 (R. 89).

C.

JURISDICTION

Certiorari to the Circuit Court of Appeals for the Eighth Circuit was granted October 9, 1939 (R. 98), ___ U. S. ___, ___ L. Ed. ___.

To save prolixity, reference to the petition therefor is made.

D.

STATEMENT OF THE CASE

The petitioner, Chicot County Drainage District, is a local improvement district located in Chicot County, Arkansas. It was duly organized under and by virtue of Act No. 405 of the Extraordinary Session of the General Assembly of Arkansas of 1920, approved February 20, 1920, as amended by Act 432 of the Acts of the General Assembly of the State of Arkansas of 1921, and under the General Drainage Law of Arkansas approved May 27, 1909 (R. 75).

The respondents are the owners of fourteen bonds in the face amount of $1,000 each issued by the District in 1924 (R. 75).

On June 17, 1935, the District filed a petition in the United States District Court for the Western Division of the Eastern District of Arkansas, wherein it asked for authority to effect a plan of readjustment of its indebtedness (Defendant's Finding of Fact No. 3, R. 76). This action was entitled "In the Matter of Chicot County Drainage District, Bankrupt," and was cause number 4357 in said court (R. 76). It will be referred to hereafter as the bankruptcy case. It was filed under authority of the First Municipal Bankruptcy Act, 48 Stat. at L. 798, Chapter 345, (U.S.C.A. Title 11, Section 303). The provisions of the act were fully complied with (Defendant's Finding of Fact No. 5, R. 77). Respondents had actual notice of the proceedings (Defendant's Finding of Fact No. 4, R. 77). On March 28, 1936, the District Court entered a final decree in the above-mentioned bankruptcy case, approving the plan of debt readjustment (R. 49). Said decree, after providing for a discharge of the District's indebtedness

for about 36 cents on the dollar, provides, in part, as follows:

> "(c) That all the old bonds and other obligations of the petitioning District affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof;" (R. 52).

Bondholders of the District holding $705,087.06 face amount of said bonds accepted the proposed plan of debt readjustment and were paid off in accordance with said plan. The holders of $57,449.37 face amount of bonds had not, at the time the final decree was entered, accepted said plan and the District was required to deposit with the clerk of the court the sum of $20,603.10 in order that the clerk might pay said bonds when they were deposited with him for that purpose (R. 48). The fourteen bonds represented in the present suit are part of those which were not deposited in accordance with the plan. Neither of the respondents appealed from said decree (Defendant's Finding of Fact No. 9, R. 78).

Thereafter, and on May 25, 1936, this court, in the case of *Ashton* v. *Cameron County Water Improvement District*, 298 U. S. 513; 56 Sup. Ct. 892, 80 L. Ed. 1309, held that the First Municipal Bankruptcy Act was unconstitutional, in so far as it applied to political subdivisions of the states.

On July 24, 1937, sixteen months after the bankruptcy decree and fourteen months after the decision in the Ash-

ton case, the respondents instituted this action, seeking judgment against the petitioner for the full face amount of their fourteen bonds, together with all past due interest (R. 1-4). The District pleaded as *res judicata* the final decree of the District Court in the bankruptcy case hereinbefore mentioned (R. 5-11). On June 2, 1938, the District Court rendered judgment in favor of the respondents for the full amount prayed in the complaint (R. 12).

This action was taken by the trial court on the theory that the District Court in the bankruptcy case had no jurisdiction of the parties plaintiff or of the subject-matter, and that its decree was therefore void for the reason that the act upon which it was founded was unconstitutional (R. 13).

In the meantime, and on the 16th day of August, 1937, the Second Municipal Bankruptcy Act became a law, 50 Stat. at L. 654, Chapter 657, (U.S.C.A. Title 11, Section 401); and on the 25th day of April, 1938, this court in the case of *United States* v. *Bekins, et al.*, 304 U. S. 27; 58 Sup. Ct. 811, 82 L. Ed. 1137, held that said act was constitutional and valid.

The case was appealed to the Circuit Court of Appeals for the Eighth Circuit, and on April 29, 1939, said court affirmed the judgment of the District Court (R. 85), Judge Woodrough dissenting (R. 89), 103 Fed. (2d) 847. Petition for rehearing was denied on May 18, 1939 (R. 97).

The Honorable Circuit Court of Appeals, in its opinion, stated: "The decree entered was a nullity and constituted no defense to plaintiff's action" (R. 89).

The case is now in this court by writ of certiorari, the petition for the writ having been granted on October 9, 1939.

The District submits that the holding of the Circuit Court of Appeals and that of the District Court to the ef-

fect that the decree entered in the bankruptcy case is void is erroneous and untenable. It is submitted that at the time the bankruptcy decree was entered the District Court had jurisdiction, that its decree is valid and binding, that it is not subject to collateral attack, and that it is *res adjudicata* of the issues involved in this case.

E.

SPECIFICATION OF ERRORS WHEREON RELIANCE WILL BE PLACED

Specification I.

The lower court erred in holding that the decree of the United States District Court for the Eastern District of Arkansas, Western Division, under date of March 28, 1936, was void and did not constitute a defense to this action.

F.

SUMMARY OF THE ARGUMENT

Specification I.

The lower court erred in holding that the decree of the United States District Court for the Eastern District of Arkansas, Western Division, under date of March 28, 1936, was void and did not constitute a defense to this action.

Point A. THE CASE CULMINATING IN THE DECREE OF MARCH 28, 1936, WAS BETWEEN THE SAME PARTIES AND INVOLVED THE SAME ISSUES AS ARE PRESENTED IN THE CASE AT BAR

Baker v. *Cummings*, 181 U. S. 117, 21 Sup. Ct. 578, 45 L. Ed. 776 (1901);

Dowell v. *Applegate*, 152 U. S. 327, 345, 14 S. Ct. 611, 38 L. Ed. 463, 470 (1894);

Johannessen v. *United States*, 255 U. S. 227, 238, 32 S. Ct. 613, 56 L. Ed. 1066, 1070 (1911);

Myers v. *International Trust Co.*, 263 U. S. 64, 73; 64 S. Ct. 77, 68 L. Ed. 165, 169 (1923);

Reed v. *Allen*, 286 U. S. 191, 52 S. Ct. 532, 76 L. Ed. 1054 (1932).

Point B. THE BANKRUPTCY DECREE IS NOT WHOLLY VOID

Arnold v. *Booth*, 14 Wis. 180 (1861);

Ashton v. *Cameron County Water Improvement District*, 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309 (1936);

Aurora v. *West*, 7 Wall. 82, 19 L. Ed. 42 (1869);

Buckmaster v. *Carlin*, 3 Scammon (Ill.) 104 (1841);

Chicago Life Insurance Co. v. *Cherry*, 244 U. S. 25, 29, 37 S. Ct. 492, 61 L. Ed. 966, 969 (1917);

Christiansen v. *Mendham*, 45 App. Div. 554, 61 N. Y. S. 326, 327 (1899);

Cromwell v. *Sac County*, 94 U. S. 351, 24 L. Ed. 195 (1877);

Cutler v. *Huston*, 158 U. S. 423, 15 S. Ct. 868, 39 L. Ed. 1040 (1895);

Dowell v. *Applegate*, 152 U. S. 327, 345, 14 Sup. Ct. 611, 38 L. Ed. 463, 470 (1894);

Gila Bend Reservoir & Irrig. Co. v. *Gila Water Co.*, 205 U. S. 279, 27 S. Ct. 495, 51 L. Ed. 801 (1907);

Hartford Life Insurance Co. v. *Johnson*, 268 Fed. 30 (1920);

Herndon v. *Moore*, 18 S. C. 339 (1882);

In Re Greyling Realty Corporation, 74 Fed. (2d) 734 (C.C.A. 2nd, 1935) cert. den. 294 U. S. 725, 55 S. Ct. 639, 79 L. Ed. 1256;

King v. *Poole*, 36 Barb. 242, 244 (N. Y., 1862);

United States v. *Bekins, et al.*, 304 U. S. 27, 58 S. Ct. 811, 82 L. Ed. 1137 (1938);

Manley v. *Park*, 62 Kan. 553, 64 Pac. 28, 30 (1901);

McWilliams v. *Blackard*, 96 Fed. (2d) 43, 45, 46 (1938);

Peyton v. *Peyton*, 28 Wash. 278, 68 Pac. 757, 764 (1902);

Putman v. *Murden*, 97 Ind. App. 313, 184 N. E. 796 (1933);

Rooker v. *Fidelity Co.*, 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923);

Schumpert v. *Smith*, 18 S. C. 358 (1882);

Stoll v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 116 (1938);

Texas & P. R. Co. v. *Gulf C. & S. F. R. Co.*, 270 U. S. 266, 274, 46 S. Ct. 763, 70 L. Ed. 578, 582 (1926);

Thomas v. *Poole*, 19 S. C. 323 (1882);

Watertown v. *Eastern Dakota Electric Co.*, 296 Fed. 832 (C.C.A. 8, 1924);

Woods Bros. Construction Co. v. *Yankton County*, 54 Fed. (2d) 304 (C.C.A. 8, 1931);

TEXT BOOKS

15 Corpus Juris 854.

STATUTES

48 Stat. at L. 654; Chapter 657 (U.S.C.A. Title 11, Sections 301-303).

Federal Constitution, Article 1, Section 8; Article 3, Section 1.

50 Stat. at L. 654, Chapter 657 (U.S.C.A. Title 11, Sections 401-404);

U.S.C.A. Title 11, Section 207.

Point C. **THE CONSTITUTIONAL OBJECTIONS WHICH EXISTED IN THE ASHTON CASE WERE NOT PRESENT IN THE BANKRUPTCY CASE AT ISSUE HERE, AND EVEN IF SAID OBJECTIONS WERE PRESENT, THE RESPONDENTS COULD NOT HAVE RAISED THEM UPON DIRECT APPEAL**

Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8, 22; 52 S. Ct. 103; 76 L. Ed. 136, 145 (1931);

Brush v. *Commissioner of Int. Rev.*, 300 U. S. 352, 368; 81 L. Ed. 691, 698 (1937);

Champlin Refining Co. v. *Corporation Comm.*, 286 U. S. 210, 234, 238; 52 S. Ct. 559; 76 L. Ed. 1062, 1078, 1080 (1932);

Drainage District No. 2 of Crittenden County, Ark., v. *Mercantile Commerce Bank & Trust Company*, 69 Fed. (2d) 138 (C.C.A. 8, 1934), cert. den. 293 U. S. 566, 55 S. Ct. 77, 79 L. Ed. 665;

Drainage District No. 7 of Poinsett County v. *Hutchins*, 184 Ark. 521, 530, 42 S. W. (2d) 996, 1,000 (1931);

Henneford v. *Silas Mason Co.*, 300 U. S. 577, 583; 57 S. Ct. 524; 81 L. Ed. 814, 819 (1937);

In re Drainage District No. 7 of Poinsett County, Arkansas, 21 Fed. Sup. 798, 803 (1937);

Iroquois Transp. Co. v. *De Laney Forge & Iron Co.*, 205 U. S. 354, 360; 27 S. Ct. 509; 51 L. Ed. 836, 840 (1907);

Luehrmann et al. v. *Drainage District No. 7 of Poinsett County, Arkansas*, 104 Fed. (2d) 696 (C.C.A. 8, 1939);

New York Ex Rel. v. *Kleinert*, 268 U. S. 646, 45 S. Ct. 618, 69 L. Ed. 1135 (1925);

Supreme Forest Woodmen Circle, et al., v. *City of Belton Texas*, 100 Fed. (2d) 655 (C.C.A. 5, 1938);

Utah Power & Light Co. v. *Pfast*, 286 U. S. 165, 186; 52 S. Ct. 548; 76 L. Ed. 1038, 1049 (1932);

Wong Tai v. *U. S.*, 273 U. S. 77, 47 S. Ct. 300, 71 L. Ed. 545 (1927);

Young v. *Masci*, 289 U. S. 253, 53 S. Ct. 599, 77 L. Ed. 1158 (1933);

Young v. *McNeal-Edwards Co.*, 283 U. S. 398, 400; 51 S. Ct. 538; 75 L. Ed. 1140, 1141 (1931);

STATUTES

50 Stat. at L. 654, Chapter 657 (U.S.C.A. Title 11, Sections 401-404);

U.S.C.A. Title 11, Section 303 (a), Sub-section (1).

D

ARGUMENT

Specification One

THE LOWER COURT ERRED IN HOLDING THAT THE DECREE OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF ARKANSAS, WESTERN DIVISION, UNDER DATE OF MARCH 28, 1936, WAS VOID AND DID NOT CONSTITUTE A DEFENSE TO THIS ACTION

Point A

THE CASE CULMINATING IN THE DECREE OF MARCH 28, 1936, WAS BETWEEN THE SAME PARTIES AND INVOLVED THE SAME ISSUES AS ARE PRESENTED IN THE CASE AT BAR

Cause No. 4357 in Bankruptcy was a bankruptcy proceeding in the United States District Court for the Eastern District of Arkansas, Western Division. This proceeding was filed by the District, petitioner here, and all of its creditors, including the plaintiffs here, were made parties (Defendant's Finding of Fact No. 4, R. 77).

While a bankruptcy proceeding is partly *in rem*, nevertheless the bankrupt and the creditors are ordinary adversaries in a contest over a composition, and the rule of *res judicata* is just as applicable as in an ordinary civil suit between the parties. *Myers* v. *International Trust Co.*, 263 U. S. 64, 73; 64 S. Ct. 77; 68 L. Ed. 165, 169 (1923).

That suit involved the readjustment of the bonded indebtedness of the District (Defendant's Finding of Fact

No. 3, R. 76, 16). In other words, it involved the question as to whether the holders of the bonds issued by the District should be allowed to recover the full face amount of those bonds or whether the District could secure a release from its obligations by payment of a less amount. In short, it involved the liability of the District on the very bonds upon which the plaintiffs have now brought this action. The plaintiffs in this action were defendants in the former action, and the defendant in this action was the plaintiff in the former action. The two cases, therefore, involve the same parties and the same subject-matter, to-wit, the liability of the District upon the bonds now in question.

We quote from the final decree of the court in the bankruptcy case as follows (R. 52):

> "(C) That all the old bonds and other obligations of the petitioning district affected by the plan of debt readjustment approved in this cause, whether heretofore surrendered and cancelled or remaining outstanding, and by whomsoever held, are hereby cancelled, annulled and held for naught as enforceable obligations of the petitioning district, except as herein provided, and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or against the property situated therein or the owners thereof; and * * *"

Under these circumstances, the doctrine of *res judicata* applies.

> "The foundation of the doctrine of *res judicata*, or estoppel by judgment, is that both parties have had their day in court. 2 Black, Judgm. Sections 500, 504. The general principle was clearly expressed by Mr. Justice Harlan, speaking for this court in *Southern P. R. Co.* v. *United States*, 168 U. S. 1, 48, 42 L. Ed. 355, 377, 18 Sup. Ct. Rep. 18:

"'That a right, question, or fact distinctly put in issue and directly determined by a court of competent jurisdiction, as a ground of recovery, cannot be disputed in a subsequent suit between the same parties or their privies.'"

Johannessen v. *United States*, 255 U. S. 227, 238, 32 Sup. Ct. 613, 56 L. Ed. 1066, 1070 (1911).

"'* * * a judgment estops, not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented.'"

Dowell v. *Applegate*, 152 U. S. 327, 345, 14 Sup. Ct. 611, 38 L. Ed. 463, 470 (1894).

The theory of the law is that matters which have once been fully investigated between the parties and determined by the court shall not be again contested, and that the judgment of the court upon matters thus determined shall be conclusive on the parties and never subject to further inquiry.

Baker v. *Cummings*, 181 U. S. 117, 21 Sup. Ct. 578, 45 L. Ed. 776 (1901).

The case of *Reed* v. *Allen*, 286 U. S. 191, 52 Sup. Ct. 532, 76 L. Ed. 1054 (1932), demonstrates the extent to which the doctrine of *res judicata* applies. It was there held that where a judgment in one case has successfully been made the basis for a judgment in a second case, the second judgment will stand as *res judicata*, although the first judgment be subsequently reversed. The court said:

"The predicament in which respondent finds himself is of his own making, the result of an utter failure to follow the course which the decision of this court in *Butler* v. *Eaton*, *supra*, had plainly pointed out. Having so failed, we cannot be expected, for his sole relief, to upset the general and well established doctrine of *res judicata*, conceived in the light of the maxim that the

> interest of the state requires that there be an end to litigation—a maxim which comports with common sense as well as public policy. And the mischief which would follow the establishment of a precedent for so disregarding this salutary doctrine against prolonging strife would be greater than the benefit which would result from relieving some case of individual hardship. *United States* v. *Throckmorton*, 98 U. S. 61, 65, 68, 69, 25 L. Ed. 93, 96."

Therefore, since this case and the bankruptcy case involve the same issues and are between the same parties, the decree in the bankruptcy case is conclusive here unless the respondents are entitled to go behind said decree on the ground that the court rendering it was without jurisdiction.

In Point B of this brief we have argued that the District Court in the bankruptcy case had jurisdiction, and also that even if it did not, still the respondents cannot assert it in this case. In Point C we have pointed out that the constitutional objections to the First Municipal Bankruptcy Act which were present in the Ashton case were not present in the bankruptcy case involved here.

Point B

THE BANKRUPTCY DECREE IS NOT WHOLLY VOID

The judgment of the trial court in this case and that of the Circuit Court of Appeals are both based upon the proposition that the District Court in the bankruptcy case had no jurisdiction to render a decree, that its decree was therefore void, and wholly without effect.

In determining the question as to whether or not the District Court in the bankruptcy case had jurisdiction, the first question is whether the respondents here, the Baxter

State Bank and Mrs. Lena S. Shields, were properly before the court in the bankruptcy case. Chapter 9 of the Bankruptcy Act, U. S. C. A. Title 11, Paragraphs 301-303, it being what has been referred to as the First Municipal Bankruptcy Act, provides as follows in Paragraph 303(c):

> "(c) Upon approving the petition or at any time thereafter the judge (1) shall require the taxing district to give such notice as the order may direct to creditors, and to cause publication to be made at least once a week for three successive weeks, of a hearing to be held within ninety days after the approval of the petition for the purpose of considering the plan of readjustment filed with the petition and of any changes therein or modifications thereof which may be proposed."

The District gave notice as required by said section, and, furthermore, in accordance with the order of the court, mailed notice to the bondholders by registered mail, and the plaintiffs in this case received actual notice of such proceedings. (Defendant's Findings of Fact No. 4 and No. 5 and No. 9, R. 77, 78). This method of acquiring service over creditors in bankruptcy has been upheld. The provisions of U. S. C. A. Title 11, Paragraph 207, which relates to corporate reorganizations, are practically the same as the provisions above set out. Said section states that the court "shall cause reasonable notice of such determination and of all hearings for the consideration of any proposed plan for the dismissal of the proceedings or the liquidation of the estate, or the allowance of fees or expenses to be given creditors and stockholders by publication or otherwise."

In the case *In Re Greyling Realty Corporation*, 74 Fed. (2d) 734 (C.C.A. 2nd, 1935), certiorari denied, 294 U. S. 725, 55 Sup. Ct. 639, 79 L. Ed. 1256, the court passed upon

the validity of this method of acquiring jurisdiction, and, in its opinion, said:

> "It is argued that the District Court has not the power to issue its process throughout the United States. Section 77A of the Act (11 U.S.C.A., Section 206) provides that 'in addition to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in Section 77B (Sec. 207) of this chapter.' And Section 77B (a) expressly grants to the court approving the petition, during the pendency of the proceedings under this section exclusive jurisdiction of the debtor and its property wherever located for the purpose of the section. The power to issue its process throughout the United States in furtherance of the purposes of a centralized organization is an inevitable conclusion because of vesting such power in the District Court of primary jurisdiction. Section 77B (c) (10)."

The court further said:

> "In the absence of legislative provision, the mode of effecting service rests with the court, within the limitations of the authorities. *Flexner* v. *Farson*, 248 U. S. 289, 39 S. Ct. 97, 63 L. Ed. 250; *Pennoyer* v. *Neff*, 95 U. S. 714, 24 L. Ed. 565. The mode and manner of effecting service was provided in the order of October 5, 1934, and afforded the appellants reasonable opportunity to be heard, and service of that order was made as the court prescribed. It became necessary for the court to make provision for such service because of the extension of the boundaries of the District Court in a proceeding under Section 77B. The previous rules respecting the issuance of process outside the territorial limits of the districts are inapplicable to proceedings under this new Bankruptcy Act."

The decision in the case of *Ashton* v. *Cameron County Water Improvement District*, 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309 (1936), did not comment upon the method of acquiring service over creditors of the bankrupt. That

case, as will be pointed out later in this brief, merely held that, in so far as the act extended benefits of the bankruptcy act to political subdivisions of a state, it was an unconstitutional encroachment upon state powers. That decision is, we submit, limited to the district involved in that case, which was specifically held to be a political subdivision of the State of Texas.

Furthermore, the second Municipal Bankruptcy Act, U.S.C.A. Title 11, Paragraphs 401-404, is not materially different from the first, in so far as its provisions with reference to acquiring service are concerned. The second act has been held to be a constitutional enactment in the case of *United States* v. *Bekins, et al.*, 304 U. S. 27, 58 S. Ct. 811, 82 L. Ed. 1137 (1938). In view of this, we take it that there can be no question but that the plaintiffs in this case, to-wit, the Baxter State Bank and Mrs. Lena S. Shields, were properly before the court in the prior bankruptcy action. At any rate, as was pointed out by Mr. Justice Reed in *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 116 (1938), the jurisdiction of the court over the parties is only a *quasi*-jurisdictional question and an adjudication may not be collaterally attacked on that ground.

The next consideration is whether the Federal District Court in the bankruptcy case had jurisdiction of the subject-matter. This requires a further examination of the decision in the Ashton case. The court did not hold in that case that the District Court was without jurisdiction. The opinion of the majority does not state that under no circumstances could relief be given to improvement districts or to municipal debtors. The court merely held that the act as written, in so far as it applied to political subdivisions of the

states, was an illegal interference by Congress with the control by the states of their own fiscal affairs and of those of their political subdivisions. The following statement of Mr. Justice McReynolds in the majority opinion is pertinent:

> "The Act has been assailed upon the ground that it is not in any proper sense a law on the subject of bankruptcies and therefore is beyond the power of Congress; also because it conflicts with the Fifth Amendment. Passing these, and other objections, we assume for this discussion that the enactment is adequately related to the general 'subject of bankruptcies.' See *Hanover Nat. Bank* v. *Moyses*, 186 U. S. 181, 46 L. Ed. 1113, 22 S. Ct. 857, 8 Am. Bankr. Rep. 9; *Continental Illinois Nat. Bank & T. Co.* v. *Chicago, R. I. & P. R. Co.*, 294 U. S. 648, 79 L. Ed. 1110, 55 S. Ct. 595, 27 Am. Bankr. Rep. (N. S.) 715; *Louisville Joint Stock Land Bank* v. *Radford*, 295 U. S. 555, 79 L. Ed. 1593, 55 S. Ct. 854, 97 A. L. R. 1106, 28 Am. Bankr. Rep. (N. S.) 397."
>
> *Ashton* v. *Cameron County Water Improvement District*, 298 U. S. 513, 527, 56 S. Ct. 892, 80 L. Ed. 1309, 1312 (1936).

Furthermore, since the opinion in the Bekins case there can be no doubt but that the first act was related to the general subject of bankruptcies. Mr. Chief Justice Hughes there said:

> "The bankruptcy power is exercised in relation to a matter normally within its province * * * etc."
>
> *United States* v. *Bekins, et al.*, 304 U. S. 27, 51, 58 S. Ct. 811, 82 L. Ed. 1137, 1144 (1938).

Jurisdiction over the subject-matter has been defined to be the right of the court to exercise judicial power over that class of cases—not the particular case before it, but rather the abstract power to try a case of the kind or character of the one pending, and not whether the particular

case is one that presents a cause of action or under the particular facts is triable in the court in which it is pending because of some inherent facts which exist and may be developed during the trial.

Peyton v. *Peyton*, 28 Wash. 278, 68 Pac. 757, 764 (1902);

Christiansen v. *Mendham*, 45 App. Div. 554, 61 N. Y. S. 326, 327 (1899);

Manley v. *Park*, 62 Kan. 553, 64 Pac. 28, 30 (1901).

We submit that the District Court in deciding the bankruptcy case was acting within its jurisdiction and that the plaintiffs here were properly before the court in that action. We submit that this is merely a case where the District Court may have made an erroneous decision from which there was no appeal, and that since that decision is still in full force and effect the plaintiffs are bound by it.

The Eighth Circuit Court of Appeals, in the case of *McWilliams* v. *Blackard*, 96 Fed. (2d) 43 (1938), had before it a case which presented the converse of the proposition presented in this case. It appeared there that the appellee, Blackard, had filed a petition for adjudication under Sub-Section (s) of Section 75 of the Bankruptcy Act (11 U.S.C. A., Section 203 (s)). The appellant resisted the granting of this petition on the ground that Sub-section (s) of Section 75 was unconstitutional, and, after the lower court had granted adjudication, appealed to the Circuit Court of Appeals, asserting the unconstitutionality of Sub-section (s). The Court of Appeals reversed the trial court, holding Subsection (s) of Section 75, as amended, unconstitutional, and directed the lower court to dismiss the debtor's petition. Pursuant thereto, the petition was dismissed by the lower court on December 11, 1936. Thereafter, on March 29, 1937,

the Supreme Court of the United States held that Sub-section (s) of Section 75 was constitutional. Following that decision, and on May 29, 1937, the debtor, Blackard, filed with the District Court his application for the reinstatement of his petition for adjudication under Sub-section (s) of Section 75, to which application the appellant entered a plea of *res judicata* based upon the prior decision of the Circuit Court of Appeals, from which there had been no appeal. The Trial Court held that the plea of *res judicata* was inapplicable, and McWilliams again appealed to the Circuit Court of Appeals. That court, in the case above cited, sustained the plea of *res judicata.*

> "Whatever may be the nature of a question presented for judicial determination,—whether depending on Federal, general, or local law,—if it be embraced by the issues made, its determination by a court having jurisdiction of the parties and of the subject-matter binds the parties and their privies so long as the judgment remains unmodified or unreversed." *Mitchell* v. *First Nat. Bank of Chicago,* 180 U. S. 471, 481, 21 S. Ct. 418, 422, 45 L. Ed. 627.
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> "Whenever the right and the duty of a court to exercise its jurisdiction depends upon the decisions of a question it has power to hear and determine, its judgment, right or wrong, is binding upon the parties and those in privity with them. *Foltz* v. *St. Louis & San Francisco Ry. Co.,* 8 Cir., 60 F. 316, 319; *Thompson* v. *Terminal Shares,* 8 Cir., 89 F. 2d 652, 655; *Wilcons* v. *Penn Mutual Life Ins. Co.,* 10 Cir., 91 F. 2d 417, 419. The power to decide includes the power to decide erroneously. *Simonitsch* v. *Bruce,* 8 Cir., 258 F. 331, 333; *Jack* v. *Hood,* 10 Cir., 39 F. 2d 594, 595."
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> "Whether a judgment is based upon the determination of a question of law or of a question of fact makes no difference with respect to its finality or effectiveness. It is a final judgment in either event. *Fauntleroy*

v. *Lum*, 210 U. S. 230, 237, 28 S. Ct. 641, 52 L. Ed. 1039; *The Fair* v. *Kohler Die & Specialty Co.*, 228 U. S. 22, 25, 33 S. Ct. 410, 57 L. Ed. 716.

"We are convinced that the court below had no power to reinstate the petition of the appellee upon the theory that the decision of this court was not *res judicata*."

McWilliams v. *Blackard*, 96 Fed. (2d) 43, 45, 46 (1938).

Using that statement as the rule to be applied in this case, we submit that the District's plea of *res judicata* should be sustained. The right of the District Court to grant the relief prayed in the bankruptcy case depended upon the validity of the First Municipal Bankruptcy Act. The District Court had the right, power, and duty to hear and determine whether the act itself was constitutional, and whether under the terms of the act the District was entitled to relief, and according to the ruling stated in the above quoted case, that decision is binding upon the parties, whether it be right or wrong.

The District Court, in the bankruptcy case, passed on the above issues, and after so doing rendered its decree of March 28, 1936. That court had the power and the jurisdiction to pass upon the constitutionality of that statute. The District Court might have held that there was no cause of action because the act was void. It had jurisdiction of the case thus to decide. It would appear to be incontestable that a United States District Court does have the power and the jurisdiction to pass upon the validity of acts of Congress unless that power is expressly taken from it. Certainly its final decision is binding upon the parties in the absence of an appeal. If the rule were otherwise there would be no end to litigation.

An analogous situation is presented in the case of *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 116 (1938). That case involved the conclusiveness of an order of the United States District Court releasing a guarantor of certain bonds from his obligations in a proceeding under Section 77(b) of the Bankruptcy Act. The Supreme Court of the State of Illinois had refused to recognize the binding effect of said order on the theory that the United States District Court was without jurisdiction to render the order in question. On writ of certiorari to this court the decision of the Supreme Court of Illinois was reversed. This court assumed for the purpose of its decision that the Bankruptcy Court did not have jurisdiction of the subject-matter of the order. In an opinion delivered by Mr. Justice Reed, the court said:

> "A court does not have the power, by judicial fiat, to extend its jurisdiction over matters beyond the scope of the authority granted to it by its creditors. There must be admitted, however, a power to interpret the language of the jurisdictional instrument and its application to an issue before the court. Where adversary parties appear, a court must have the power to determine whether or not it has jurisdiction of the person of a litigant, or whether its geographical jurisdiction covers the place of the occurrence under consideration. Every court in rendering a judgment tacitly, if not expressly, determines its jurisdiction over the parties and the subject-matter. An erroneous affirmative conclusion as to the jurisdiction does not in any proper sense enlarge the jurisdiction of the court until passed upon by the court of last resort, and even then the jurisdiction becomes enlarged only from the necessity of having a judicial determination of the jurisdiction over the subject-matter. When an erroneous judgment, whether from the court of first instance or from the court of final resort, is pleaded in another court or another jurisdiction the question is whether the former judgment is *res judicata*. After a Federal

court has decided the question of the jurisdiction over the parties as a contested issue, the court in which the plea of *res judicata* is made has not the power to inquire again into that jurisdictional fact. We see no reason why a court, in the absence of an allegation of fraud in obtaining the judgment, should examine again the question whether the court making the earlier determination on an actual contest over jurisdiction between the parties, did have jurisdiction of the subject-matter of the litigation. In this case the order upon the petition to vacate the confirmation settled the contest over jurisdiction.

"Courts to determine the rights of parties are an integral part of our system of government. It is just as important that there should be a place to end as that there should be a place to begin litigation. After a party has his day in court, with opportunity to present his evidence and his view of the law, a collateral attack upon the decision as to jurisdiction there rendered merely retries the issue previously determined. There is no reason to expect that the second decision will be more satisfactory than the first."

Upon principle, a court possesses power to determine whether it has authority to entertain a particular controversy, although its decision and the law be that it has no such authority, and it therefore dismisses the suit. Where the question is raised whether the court has jurisdiction to determine the controversy, that question itself calls for a judicial determination, and the decision is a judicial act and necessarily an exercise of jurisdiction.

See:

King v. *Poole*, 36 Barb. 242, 244 (N. Y., 1862).

The case of *Stoll* v. *Gottlieb* (*supra*) apparently places some stress upon the fact that the jurisdictional issue was actually raised in the case culminating in the contested decree.

The fact that the party asserting invalidity of the contested decree actually appeared in the court rendering it and contested the jurisdiction of the court should not be controlling. It should be sufficient that such party had an opportunity to appear and set up whatever defenses it might care to make. As a general principle, the doctrine of *res judicata* applies not only as to every ground of recovery or defense actually presented in the action, but also as to every ground which might have been presented.

Dowell v. *Applegate*, 152 U. S. 327, 345, 14 S. Ct. 611, 38 L. Ed. 463, 470 (1894).

Cromwell v. *Sac County*, 94 U. S. 351, 24 L. Ed. 195 (1877).

Aurora v. *West*, 7 Wall. 82, 19 L. Ed. 42 (1869).

A failure to make a defense by a party who is in court is, generally speaking, equivalent to making a defense and having it overruled.

Gila Bend Reservoir & Irrig. Co. v. *Gila Water Co.*, 205 U. S. 279, 27 S. Ct. 495, 51 L. Ed. 801 (1907).

It does not appear from the record in this case that the respondents, The Baxter State Bank and Mrs. Lena S. Shields, or either of them, appeared in the bankruptcy case. It does appear, however, that a great majority of the bondholders were represented in that proceeding (R. 27, 29).

The respondents were given ample notice of the time and place of the hearing (R. 15, 30, 32, 55) and therefore had opportunity to appear and be heard upon any issues they cared to raise. Admittedly, under the doctrine set out in the case of *Stoll* v. *Gottlieb*, had these respondents appeared and contested the jurisdiction of the court in the bankruptcy case they would be bound by its decision in the

absence of an appeal. We can conceive of no valid reason why they should be in any better position for not having done so. It might be that had they appeared and presented the argument they now make the court rendering the bankruptcy decree would have dismissed the proceeding. A party should be required to make timely objections. It is probably from similar considerations that the doctrine of *res judicata* is held applicable, not only as to every ground of recovery or defense actually presented, but also as to every ground which might have been presented. We can conceive of no sufficient reason why an exception to this doctrine should be made in this case.

In every case a court, which renders judgment against a defendant, asserts, at least tacitly, its jurisdiction over the parties and over the subject-matter.

See:

Chicago Life Insurance Co. v. *Cherry*, 244 U. S. 25, 29, 37 S. Ct. 492, 61 L. Ed. 966, 969 (1917);

Texas & P. R. Co. v. *Gulf C. & S. F. R. Co.*, 270 U. S. 266, 274, 46 S. Ct. 263, 70 L. Ed. 578, 582 (1926).

The case of *Dowell* v. *Applegate*, 152 U. S. 327, 14 S. Ct. 611, 38 L. Ed. 463, involved the title to certain lands, the plaintiff, Dowell, claiming under a decree of the Federal Circuit Court for the District of Oregon. The defendant contended that said decree was void, asserting that the Federal Circuit Court was without jurisdiction to determine said cause for the reason that no Federal question was involved and that all parties were citizens of the same state. For the purpose of its opinion this court assumed that the Federal Circuit Court was without jurisdiction

in the controversy, but, nevertheless, upheld its decree as *res judicata*. It was there said:

> "These authorities, above cited, it is said, do not meet the present case, because the ground on which it is claimed, the Federal court assumed jurisdiction was insufficient in law to make this case one arising under the laws of the United States. But that was a question which the circuit court of the United States was competent to determine in the first instance. Its determination of it was the exercise of jurisdiction. *Even if that court erred in entertaining jurisdiction, its determination of that matter was conclusive upon the parties before it, and could not be questioned by them or either of them collaterally, or otherwise than on writ of error or appeal to this court.* As said in *Des Moines Nav. & R. Co.* v. *Iowa Homestead Co.*, above cited, if the circuit court 'kept the case when it ought to have been remanded, or if it proceeded to adjudicate upon matters in dispute between two citizens of Iowa, when it ought to have confined itself to those between the citizens of Iowa and the citizens of New York, its final decree in the suit could have been reversed, on appeal, as erroneous, but the decree would not have been a nullity. *To determine whether the suit was removable in whole or in part or not, was certainly within the power of the circuit court. The decision of that question was the exercise and the rightful exercise of jurisdiction, no matter whether in favor of or against taking the cause.* Whether its decision was right, in this or any other respect, was to be finally determined by this court on appeal'." (Italics ours.)
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> "This disposes of the first objection urged against the decree in the Federal Court under which Dowell purchased. That decree cannot be treated, in this suit, as void for want of jurisdiction."

In the case of *Cutler* v. *Huston*, 158 U. S. 423, 15 S. Ct. 868, 39 L. Ed. 1040 (1895), it was again urged that a judgment of the Circuit Court of the United States for the Western District of Michigan was void for the reason that there

was no diversity of citizenship. In reviewing this argument, this court said:

> "* * * while said judgment remains unreversed it is not a nullity, and cannot be collaterally attacked. This was held in *McCormick* v. *Sullivant*, 23 U. S. 10 Wheat. 192. That was a case where, to a bill brought in the circuit court of the United States to enforce a claim to real estate, the defendants filed a plea in bar to former proceedings in a United States court. To this there was a special replication alleging that the proceedings in such former suit were *coram non judice*, because the record did not show that the complainants and defendant in that suit were citizens of different states, and the court, through Mr. Justice Washington, said: 'This reason proceeds upon an incorrect view of the character and jurisdiction of the inferior courts of the United States. They are all of limited jurisdiction, but they are not, on that account, inferior courts in the technical sense of those words, whose judgments, taken alone, are to be disregarded. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous, and may, upon a writ of error or appeal, be reversed for that cause. But they are not absolute nullities'; *Evers* v. *Watson, ante*, p. 520. Accordingly the decree was held to be a valid bar of the subsequent suit."

The Eighth Circuit Court of Appeals, in the case of *Hartford Life Insurance Co.* v. *Johnson*, 268 Fed. 30 (1920), stated:

> "'Jurisdiction of the subject-matter and of the parties is the right to hear and determine the suit or proceeding in favor of or against the respective parties to it. The facts essential to invoke this jurisdiction differ materially from those essential to constitute a good cause of action for the relief sought. A defective petition in bankruptcy, or an insufficient complaint at law, accompanied by proper service of process upon the defendants, gives jurisdiction to the court to determine the questions involved in the suit, although it may not contain averments, which entitle the complainant to any relief; and it may be the duty of the court to

determine either the question of jurisdiction or the merits of the controversy against the petitioner or plaintiff. Facts indispensable to a favorable adjudication or decree include all those requisite to state a good cause of action, and they comprehend many that are not essential to the jurisdiction of the suit or proceedings.'

"It is the power to hear and determine the subject-matter in controversy which constitutes jurisdiction. *Rhode Island* v. *Massachusetts*, 37 U. S. (12 Pet.) 657, 718, 9 L. Ed. 1233; *Riggs* v. *Johnson County*, 73 U. S. (6 Wall.) 169, 187, 18 L. Ed. 768; *Foltz* v. *St. Louis, etc., Ry. Co.*, 60 Fed. 316, 8 C.C.A. 635. It does not depend upon the decision of the case. *Columbus Ry. Light & Power* v. *Columbus*, 249 U. S. 399, 406, 39 Sup. Ct. 349, 63 L. Ed. 669, 6 A. L. R. 1648.

"It is true the jurisdictional allegations of a complaint may be put in issue by proper plea, but even in such a case the court in deciding such a plea exercises jurisdiction. Even if it sustains its jurisdiction erroneously, the judgment is not subject to collateral attack, although cause for reversal upon appeal."

It appears in each of the above decisions that judgments were held binding on a plea of *res judicata*, even though the court rendering the judgment had no jurisdiction over the controversy. It may be, as stated by Mr. Justice Reed in the case of *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 116, that the controlling question in these cases is whether the court rendering the judgment or decree had "color of jurisdiction." To say the least, "color of jurisdiction" should add some dignity to the judgment.

In the case at bar the District Court rendering the bankruptcy decree was acting under and by virtue of a statute of Congress, which statute at the time the decree was rendered was in full force and effect. The court followed the statute strictly, and no complaint has been made as to

the procedure adopted. Certainly the court had "color of jurisdiction." The Federal Constitution provides that Congress shall create courts inferior to the Supreme Court, Article 1, Section 8; Article 3, Section 1. An Act of Congress, therefore, must establish at least a "color of jurisdiction."

In 15 C. J. 854, the following statement is made:

> "Where a statute conferring jurisdiction is held unconstitutional, such decision will have no retroactive effect on the principle, *communis error facit jus*, and where proceedings have been regularly had under the law as it existed before such decision they will not be disturbed."

In support of this statement, the text cites the case of *Herndon* v. *Moore*, 18 S. C. 339 (1882). That case involved the binding effect of a judgment of the Probate Court rendered in 1872 in a case to partition real estate. At the time of the judgment jurisdiction in said court for such purpose was provided by legislative act. In 1878, in a cause styled *Davenport* v. *Caldwell*, the Supreme Court of South Carolina held the act conferring jurisdiction was unconstitutional. Thereafter, this action was filed contesting the judgment of 1872. The court held that it was binding. It said:

> "It is urged that the sale for partition by the Probate Court in the case of Herndon, having been made prior to the decision in *Davenport* v. *Caldwell*, and while the jurisdiction of the Probate Court was generally recognized, should not be affected by that judgment. Certainly the judgment in that case only bound the parties before the court, but a decision of the Supreme Court upon a constitutional question, not only affects the case before the court, but stands as an authoritative construction of the clause interpreted, and, as a general rule, is conclusive upon other cases involving the same question.

"This is certainly true of all cases arising after the decision, and although in its effect upon cases decided before, there may be something of the element which makes *ex post facto* laws so objectionable, yet there is undoubtedly a difference in effect between repealing a valid law, and declaring that one in form never was law. In the former case all acts done and rights vested under the law before its repeal, will be maintained, while in the latter the declaration of unconstitutionality ordinarily reaches back to the date of the act itself. But there is an exception as to the class of cases in which, for sufficient reasons, the declaration of the unconstitutionality of a law is not allowed to have greater effect than a simple repeal sustaining all acts done and all judicial proceedings had under it before such declaration, in analogy to the principle of *res adjudicata*.

"In such case, rights acquired under an act having the form of law, are sustained, although the act be afterwards declared unconstitutional upon the principle involved in the maxim *communis error facit jus*. This proceeds upon the view that to annul everything done under an act solemnly passed by the lawmaking power of the State, generally received as valid and so expounded and administered by courts of justice, would operate as a fraud upon the parties thus misled. This doctrine, although exceptional in character, is well sustained by authority." (pages 353, 354.)

"* * * According to our view, the proceedings for partition of Herndon's estate, regularly had in the Probate Court, prior to the decision of *Davenport* v. *Caldwell*, should be held binding upon all parties concerned." (page 357.)

To the same effect, see:

Thomas v. *Poole*, 19 S. C. 323 (1882);

Schumpert v. *Smith*, 18 S. C. 358 (1882).

If the case at bar is actually a case wherein the District Court in the bankruptcy case did not have jurisdiction, then we submit that it certainly presents a situation

where the exception to the general rule should govern as was stated in the case of *Herndon* v. *Moore*, 18 S. C. 339 (1882).

In this case at least, and probably in many others, a great amount of money has been paid out in reliance on the validity of this decree. The Reconstruction Finance Corporation, and possibly other persons, have purchased bonds issued by improvement districts relying upon the fact that said bonds were a first lien on the lands within the district. If the respondents be permitted to prevail here, these persons who purchased in good faith will be relegated to the position of a second mortgagee. On the other hand, it will work no hardship on the respondents to sustain the District in the contentions it now makes. The respondents had an opportunity to set aside the decree now complained of by direct appeal. Had they come into court and taken an appeal, it is unlikely the new bonds would have been issued pending the appeal. At any rate, prospective purchasers would have been put on notice of adverse claims. Furthermore, the District itself would not have proceeded with its refinancing arrangements and thereby incurred great expense unnecessarily.

Instead, however, of protecting their rights in this manner, respondents elected to sit idly by and lull the District and the prospective purchasers of its bonds into a sense of security. They waited until after the District had fully completed its arrangements for refinancing; until after practically all its creditors had accepted the plan of reorganization; until the District's liabilities were so reduced in proportion to its assets as to make it almost certain that the District could pay respondents' securities in full if compelled by the courts so to do. Before making any move whatsoever, they waited for sixteen months after the bank-

ruptcy decree and for fourteen months after the decision of this court in the Ashton case.

If there is any exception to the general rule as stated in the case of *Herndon* v. *Moore*, 18 S. C. 339, *supra*, then this case should fall within it.

There is another line of decisions which in some respects pass on similar issues. These decisions are best exemplified by the case of *Woods Bros. Construction Co.* v. *Yankton County*, 54 Fed. (2d) 304 (C.C.A. 8, 1931), wherein the plaintiff company brought action in the United States District Court of South Dakota against the defendant, Yankton County, to recover compensation for certain construction work performed by plaintiff. The contract under which the work was done was entered into between the company and the Board of Commissioners of Yankton County, said commission proceeding by virtue of Chapter 193, Laws of 1921, relating to drainage districts. The District Court entered a judgment for the plaintiff on March 22, 1929. Subsequent thereto, and on May 7, 1929, the Supreme Court of South Dakota, in another, though similar, action, held that Chapter 193, Laws of 1921, was unconstitutional. Thereafter, and subsequent to the expiration of the term during which the judgment of March 22 was entered, the Board of County Commissioners filed a motion in the District Court for modification of said judgment. The District Court thereupon vacated its judgment of March 22, 1929, and dismissed the action. The trial court said:

> "That this court was without jurisdiction to try and determine any controversy between the parties hereto arising under said contract or under the pleadings in this action, because the court had no jurisdiction of the subject-matter in the absence of a law

under which the Board of County Commissioners could act."

From this action the plaintiff company appealed and secured a reversal. The Circuit Court of Appeals in its opinion said:

"We are unable to agree with the conclusions of the trial court. It seems clear to us that *at the time* judgment was entered jurisdiction existed in the federal court so to do. There was diversity of citizenship, the amount in controversy was sufficient, a legal right was asserted by appellant, and denied by appellees. 'Jurisdiction' has been defined in *Reynolds* v. *Stockton*, 140 U. S. 254, 268, 11 S. Ct. 773, 777, 35 L. Ed. 464, as 'the right to adjudicate concerning the subject-matter in the given case.' The test of jurisdiction is whether there was power to enter upon the inquiry. Surely there was a 'case' or 'controversy' here within the meaning of article 3 of the Constitution of the United States. The subject-matter which was in controversy was appellant's claim for compensation for services rendered to petitioners for the project and to the owners of the lands. The term 'subject-matter necessary to confer jurisdiction' means in the federal courts that a 'case' or 'controversy' within the meaning of article 3 of the Constitution of the United States is present. *It is not necessary that the right asserted be based upon a valid law. That question goes to the merits of the action and not to the jurisdiction of the court.* A federal court cannot refuse jurisdiction of a controversy because the constitutionality of a state statute may be involved. (Italics ours.)

"In *Flanders* v. *Coleman*, 250 U. S. 223, 227, 39 S. Ct. 472, 473, 63 L. Ed. 948, the court said: 'Whether the District Court has jurisdiction to grant any relief must be determined upon a consideration of the allegations of the bill and the amendment thereto. If there be enough of substance in them to require the court to hear and determine the cause, then jurisdiction should have been entertained.' And on page 228 of 250 U. S., 39 St. Ct. 472, 474, 63 L. Ed. 948: 'As this court has not

infrequently said, jurisdiction must be determined not upon the conclusion on the merits of the action, but upon consideration of the grounds upon which federal jurisdiction is invoked."

"The judgment of March 22, 1929, was conclusive as to all issues raised by the pleadings, and those necessarily involved in the rights adjudicated thereunder. The validity of the 1921 amendment to the South Dakota Drainage Laws was raised by the pleadings and was necessarily involved in an adjudication that appellant had the right to recover. Both the county and the board of county commissioners pleaded that chapter 193 of the laws of 1921 was unconstitutional. The federal court had the power at that time to pass upon the validity of the South Dakota statutes under which the contract had been made. It was as competent in law to pass on the question as was the state court. Their constitutionality was an issue."

The situation in the Yankton case is not greatly different from that in the case at bar. It appears that in each case a judgment was entered, and, further, that said judgment was based upon an unconstitutional statute. Similarly, in each case after the judgment was rendered the statute upon which the judgment was based and relief given was declared unconstitutional by a superior court in unrelated cases. In the Yankton case this court held that the unconstitutionality of the statute as subsequently determined made no difference whatever; that in spite of this the prior judgment was valid and binding for the reason that at the time judgment was entered jurisdiction existed in the court rendering said judgment.

At the time the Federal District Court in Arkansas rendered its decree on March 28, 1936, it did possess jurisdiction both of the parties and of the subject-matter. At that time the act had not been declared unconstitutional. The question of the constitutionality of the act could have been

presented to the District Court in the action therein pending. Whether such question was actually presented makes no difference. The court had jurisdiction to pass on the and determine that question. It is almost unquestionable that the District had the power to determine the issues presented in the bankruptcy case. Whether the court should have given the relief sought by the plaintiff in that case is a question entirely different from that as to whether the court had jurisdiction. It so happens that the court may have erred in granting the relief sought by the petitioner, the drainage district in that case, but this was an error subject to correction only by appeal.

Another similar case is that of *Arnold* v. *Booth*, 14 Wis. 180 (1861), which was an action to recover property seized under execution on a judgment. The issue presented was whether the judgment upon which the execution was based and which was rendered by the United States District Court for Wisconsin in a suit under the Fugitive Slave Law of 1850, was binding. The plaintiff argued that the District Court was a court of limited jurisdiction, and, as the Fugitive Slave Law had been declared unconstitutional, the judgment was a nullity and subject to collateral attack, because the record showed the subject-matter in controversy in the District Court was solely the recovery of a penalty given for the violation of an unconstitutional law. It was held that the judgment of the Federal District Court was, nevertheless, binding, the court reasoning as follows:

> "Obviously the cause of action in the suit of Garland against Booth was a penalty given by the Fugitive Slave Law for a violation of its provisions. *But whether there was any law in existence giving this right of action, and, if so, whether the law was valid and binding, were legitimate matters of consideration for the dis-*

trict court, as was the question of its violation. The court might have held that there was no cause of action because the law was void. It had jurisdiction of the case thus to decide. This it seems to me is incontestable. I do not wish to be understood as saying that a court may give itself jurisdiction by deciding that it has it, or that other courts would be concluded by such a decision when that question came before them. For this would be merely holding that the exercise of power by a court proved the rightful exercise of such power—a proposition for which no one would probably contend. I am endeavoring to make obvious to others, what is plain to my own mind, namely, that the question arising upon the record offered in evidence is not really one going to the jurisdiction of the district court, but one touching the question as to whether in fact there was any cause of action. If I am right in this view of the case, it would then follow that the decision of that court holding that a good cause of action existed, however erroneous, must be binding until reversed.

"* * * it seems to me that it is analogous in principle, and that the same rule must apply here that is held to apply in cases where the jurisdiction of a court extends over a class of cases but the court gives judgment in a particular case where the facts and law do not authorize it."

See also:

Rooker v. *Fidelity Co.*, 263 U. S. 413, 44 S. Ct. 149, 68 L. Ed. 362 (1923);

Buckmaster v. *Carlin*, 3 Scammon (Ill.) 104 (1841);

Watertown v. *Eastern Dakota Electric Co.*, 296 Fed. 832 (C.C.A. 8, 1924);

Putman v. *Murden*, 97 Ind. App. 313, 184 N. E. 796 (1933).

The theory of the above line of decisions is that where the judgment in controversy is based upon a statute, which later in a different controversy, is declared to be unconstitutional, still the prior judgment remains in full force

and effect in the absence of an appeal. The theory of these cases is that the validity of the statute is a question going to the merits of the controversy and not one going to the jurisdiction of the court. Admittedly, in the absence of a valid act the court could not legally render its judgment, but the validity or invalidity of the statute upon which the cause of action is based is just as much a fact to be established as any other fact necessary to be proved in the case.

In the case at bar the Drainage District filed its petition in bankruptcy in the United States District Court. This court admittedly had jurisdiction over bankruptcies, and the subject-matter of the suit was one related to the general subject of bankruptcies.

Ashton v. *Cameron County Water Improvement District*, 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309 (1936);

United States v. *Bekins, et al*, 304 U. S. 27, 58 S. Ct. 811, 82 L. Ed. 1137, 1144 (1938).

The creditors of the district were brought before the court in the same manner as in other bankruptcy actions and in accordance with the act itself. The District in that proceeding asserted a cause of action. Its right to relief was, of course, dependent upon the statute. It pleaded this statute and also all other facts necessary to entitle it to the relief prayed. The present respondents were parties to that proceeding, whether or not they made formal appearance, and they now assert that the statute upon which the District relied was unconstitutional. It is submitted that their argument is one going to the merits of that conroversy and not one directed to the jurisdiction of the court. They might just as well in this case attack the decree rendered therein because the Drainage District, in the bankruptcy

proceeding, did not prove some other fact necessary to its case. Yet, if that was the basis of the present attack on said decree, we take it this case would present no difficulty, inasmuch as all the authorities are agreed that under such circumstances the prior decree is binding.

Point C

THE CONSTITUTIONAL OBJECTIONS WHICH EXISTED IN THE ASHTON CASE WERE NOT PRESENT IN THE BANKRUPTCY CASE AT ISSUE HERE, AND EVEN IF SAID OBJECTIONS WERE PRESENT, THE RESPONDENTS COULD NOT HAVE RAISED THEM UPON DIRECT APPEAL

Up to this point in this brief we have argued that the decree in the bankruptcy case was not wholly void, that it is not subject to collateral attack, and that it is *res judicata* of every issue in this case. In this section of the brief it is argued that the respondents can accomplish no more by collateral attack on the bankruptcy decree than could have been accomplished by them by direct appeal, and that had the respondents appealed from the bankruptcy decree, said decree would have been affirmed.

In the first place, the unconstitutionality of the statute must be especially pleaded, and the failure so to do would constitute a waiver of any defense on that ground.

Wong Tai v. *U. S.*, 273 U. S. 77, 47 S. Ct. 300, 71 L. Ed. 545 (1927);

New York Ex Rel. v. *Kleinert*, 268 U. S. 646, 45 S. Ct. 618, 69 L. Ed. 1135 (1925);

Young v. *Masci*, 289 U. S. 253, 53 S. Ct. 599, 77 L. Ed. 1158 (1933).

The respondents filed no pleading in the district court at the time the bankruptcy proceedings were had. Therefore, under the well established rules of this court, no constitutional questions could have been argued upon appeal.

Furthermore, the status of Chicot County Drainage District is quite different from that of Cameron County Water Improvement District No. 1, and had respondents appealed from the bankruptcy decree, it is very questionable whether this court would have held the First Municipal Bankruptcy Act unconstitutional in so far as it applied to the petitioner drainage district. The act by its terms applied "to any municipality or other political sub-division of any state, including (but not hereby limiting the generality of the foregoing) any county, city, burrough, village, parish, town or township, unincorporated tax or special assessment district, and any school, drainage, irrigation, reclamation, levee, sewer, or paving, sanitary, port, improvement, or other districts." U. S. C. A. Title 11, Section 303 (a).

Sub-division (L) is the separability clause and reads as follows:

> "If any provision of this chapter *or the application thereof to any person* or circumstances is held invalid, the remainder of the chapter, *or the application of such provision to other persons* or circumstances, shall not be affected thereby." (Italics ours.)

The decision in the Ashton case is based upon the finding that Cameron County Water Improvement District No. 1 was a political sub-division of the state. The court said:

> "It is plain enough that respondent is a political sub-division of the state, created for the local exercise of her sovereign powers and that the right to borrow money is essential to its operations. * * * Its fiscal af-

fairs are those of the state not subject to control or interference by the national government unless the right so to do is definitely accorded by the federal constitution."

See also:

Brush v. *Commissioner of Int. Rev.*, 300 U. S. 352, 368; 81 L. Ed. 691, 698 (1937).

The situation of Chicot County Drainage District is entirely different. This district is not a political sub-division of the State of Arkansas, and the objection to the act which was raised in the Ashton case probably would not have arisen in the bankruptcy case here had it been appealed, and the constitutional issue raised.

In the case of *Drainage District No. 7 of Poinsett County* v. *Hutchins*, 184 Ark. 521, 530, 42 S. W. (2d) 996, 1000, the Supreme Court of Arkansas defined drainage districts as "the agent of the property owners in the district whose interests are affected by the duties they perform. They exercise no governmental powers except those expressly or impliedly granted by the Legislature. They are not political or civil divisions of the state like counties and municipal corporations created to aid in the general administration of the government. They are not created for political purposes or for the administration of civil government."

See also:

In re Drainage District No. 7 of Poinsett County, Arkansas, 21 Fed. Sup. 798, 803 (1937);

Drainage District No. 2 of Crittenden County, Ark., v. *Mercantile Commerce Bank & Trust Co.*, 69 Fed. (2d) 138 (C.C.A. 8, 1934), cert. den. 293 U. S. 566, 55 S. Ct. 77, 79 L. Ed. 665.

This precise question was raised in the case of *Luehrmann et al. v. Drainage District No. 7 of Poinsett County, Arkansas*, 104 Fed. (2d) 696 (C.C.A. 8, 1939). In this case the Drainage District filed a debt composition proceeding pursuant to the provisions of the Second Municipal Bankruptcy Act (11 U.S.C.A., Sections 401-404). The court sustained the constitutionality of the act as applied to the case at issue and pointed out the difference between a drainage district in Arkansas and the Water Improvement District which was involved in the Ashton case. The court said:

> "A former Act (May 24, 1934, 11 U. S. C. A., Sections 301-303) permitting municipal corporations and other political subdivisions of states, unable to pay their debts as they mature, to resort to the federal courts of bankruptcy to effect readjustment of obligations, was before the Supreme Court in *Ashton* v. *Cameron County Water Improvement District No, 1*, 298 U. S. 513, 56 S. Ct. 892, 80 L. Ed. 1309. It was there held that the power claimed in support of the Act, as applied to the district organized to permit water for irrigation and domestic purposes, having power to sue and be sued, issue bonds, and levy and collect taxes, was unconstitutional, as restricting the states in the control of their fiscal affairs. The appellant district there was held to be a political subdivision of the state.
>
> "The Act of August 16, 1937, under which this proceeding was brought, undertakes to meet the constitutional weakness of the former Act by the following provision: 'That if any provision of this chapter, or the application thereof to any such taxing agency or district or class thereof or to any circumstance, is held invalid, the remainder of the chapter, or the application of such provision to any other or different taxing agency or district or class thereof or to any other or different circumstances, shall not be affected by such holding.' 11 U. S. C. A., Section 401.
>
> "In *Drainage District No. 2 of Crittenden County, Arkansas*, v. *Mercantile-Commerce Bank & Trust Company*, 8 Cir., 69 F. 2d 138, this court held that an

Arkansas Drainage District is not a governmental agency as respects the question of whether the district is subject to equity jurisdiction. This ruling is based upon the decisions of the Supreme Court of Arkansas holding that drainage districts are *quasi*-public corporations which are not political or civil divisions of the state like counties and municipal corporations created to aid in the general administration of the government. They are not created for political purposes, nor for the administration of the government. Appellants do not contend that the petitioner falls within the limitation upon the power springing from this amendment to the Bankruptcy Act, which limitation was declared in the Ashton case."

As heretofore pointed out, the first act contained a separability clause which was similar to that contained in the second act. The first act was not, therefore, unconstitutional in its application to Chicot County Drainage District of Chicot County, Arkansas. It did not, as applied to that District, interfere with any rights of the State of Arkansas or of any of its political subdivisions.

The constitutional question which was raised in the Ashton case and which was held to be sufficient to make the act unconstitutional probably could not have been raised in this case had an appeal been taken from the bankruptcy decree.

See:

Iroquois Transp. Co. v. *De Laney Forge & Iron Co.*, 205 U. S. 354, 360, 27 S. Ct. 509, 51 L. Ed. 836, 840 (1907);

Champlin Refining Co. v. *Corporation Comm.*, 286 U. S. 210, 234, 238; 52 S. Ct. 559; 76 L. Ed. 1062, 1078, 1080 (1932);

Bandini Petroleum Co. v. *Superior Court*, 284 U. S. 8, 22; 52 S. Ct. 103; 76 L. Ed. 136, 145 (1931);

Utah Power & Light Co. v. *Pfast*, 286 U. S. 165, 186; 52 S. Ct. 548; 76 L. Ed. 1038, 1049 (1932);

Hereford v. *Silas Mason Co.*, 300 U. S. 577, 583; 57 S. Ct. 524; 81 L. Ed. 814, 819 (1937);

Young v. *McNeal-Edwards Co.*, 283 U. S. 398, 400; 51 S. Ct. 538; 75 L. Ed. 1140, 1141 (1931).

We do not suggest that this court should retry the bankruptcy case upon its merits. The doctrine of *res judicata* no doubt, was originally adopted for the very purpose of obviating the continual retrial of cases. We merely suggest these points in order to more clearly demonstrate the fallacy of the decisions in the lower courts. We submit that in order to circumvent the plea of *res judicata* a party must clearly demonstrate that the court rendering the judgment pleaded as an estoppel was without jurisdiction and that in any case where there arises even a suspicion that upon appeal from the original judgment the judgment would have been affirmed, then, in such case, the doctrine of *res judicata* must be held to apply.

There is one further point that might be mentioned in connection with this controversy. It has been suggested by at least one federal court that the decision in the Bekins case completely reverses that in the Ashton case.

Supreme Forest Woodmen Circle, et al., v. *City of Belton, Texas*, 100 Fed. (2d) 655 (C.C.A. 5, 1938).

If this conclusion of the Circuit Court of Appeals for the Fifth Circuit is correct, then the decision in the Ashton case concludes no one other than the parties to that controversy. Reasoning further from that conclusion, the court rendering the decree in controversy here acted in a

regular manner and in all respects within its jurisdiction, and its final decree is conclusive on the parties to this action and necessitates a reversal of this cause.

CONCLUSION

We have argued in this brief three main issues. If the petitioner prevails on any one of these issues, this cause should be reversed with directions that the complaint be dismissed. After disposing of the question as to whether this cause and that determined in the bankruptcy proceeding were between the same parties and involved the same subject-matter, we argued, first, that the District Court in rendering the bankruptcy decree acted within its jurisdiction, and that its decree is now in full force and effect, just as conclusively as if the First Municipal Bankruptcy Act had been held constitutional in the Ashton case. In support of this argument, we referred to the cases of *Stoll* v. *Gottlieb*, 305 U. S. 165, 59 S. Ct. 134, 83 L. Ed. 116 (1938); *McWilliams* v. *Blackard*, 96 Fed. (2d) 43, 45, 46 (1938), and related cases. It is the theory of these cases that a court has the power to interpret the language of the jurisdictional instrument and its application to the issue before the court; that whether the judgment of the court is based upon the determination of a question of law or a question of fact makes no difference with respect to its finality or conclusiveness; and that the very act of the trial court in passing upon its jurisdiction was a judicial act and necessarily an exercise of jurisdiction and was binding upon the parties. We further argued in line with *Woods Brothers Construction Company* v. *Yankton County*, 54 Fed. (2d) 304 (C.C.A. 8, 1931), and *Arnold* v. *Booth*, 14 Wis. 180 (1861), that the constitutionality of the statute was a mat-

ter going to the merits of the controversy and not really a question relating to the jurisdiction of the court.

Secondly, we argued, relying upon *Dowell* v. *Applegate*, 152 U. S. 327, 345, 14 Sup. Ct. 611, 38 L. Ed. 463, 470 (1893), *Herndon* v. *Moore*, 18 S. C. 339 (1882), and other similar cases, that even though the court rendering the decree in bankruptcy acted in excess of its jurisdiction, still said judgment is binding upon the parties.

Thirdly, it was argued that the First Municipal Bankruptcy Act as applied to this petitioner was not unconstitutional; that had there been a direct appeal from the bankruptcy decree there is serious doubt as to whether it would have been reversed, and that respondents cannot be permitted to accomplish by collateral attack on that decree something which they could not have accomplished by direct appeal.

Judge Woodrough, in his dissenting opinion in the Circuit Court of Appeals, 103 Fed. (2d) 847, 849 (R. 89), summarized this case in an able manner. In commenting on the status of the act between the time of its enactment and the time it was declared unconstitutional, he stated:

> "But it seems to me that our duly constituted courts, sitting in the various districts and circuits throughout the nation, functioning in equity, law or bankruptcy, remained clothed with judicial power, including the power to pass on the constitutionality of the law and that their solemn judgments in all cases, including bankruptcy cases, ought to be given full faith and credit unless appealed from and reversed. The amendment to the Bankruptcy Act affected very large property rights. I think it ought not to be held that there was a *hiatus* of governmental power in respect to them, or that the Supreme Court decision annulling the amendment operated retroactively to render void

the final unappealed from judgments of all the courts that had passed on the amendment and adjudicated rights between litigants in respect to it. It ought to be held that government by law is continuous at least in the courts of the nation'' (R. 89-90).

We therefore respectfully pray that this cause be reversed and remanded with directions.

Respectfully submitted,

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FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

CHICOT COUNTY DRAINAGE DISTRICT, *Petitioner,*

v.

No. 122

THE BAXTER STATE BANK AND MRS. LENA S. SHIELDS, *Respondents.*

REPLY BRIEF FOR PETITIONER

JAMES R. YERGER,
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TABLE OF CASES CITED

TEXT BOOKS

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REPLY BRIEF FOR PETITIONER

The brief for respondents does not touch upon the questions which we conceive to be involved in this case. Their brief seems to be directed to the question as to what respect should be accorded an unconstitutional act. They argue that such an act is not effective to accomplish any purpose whatsoever, and as a general rule we admit that that is true.

However, this does not meet the present proposition. In our humble opinion, the question here is what respect should be accorded a *judgment* rendered on a claim based on an unconstitutional act. In other words, the question is the effect of the judgment and not the effect of the act itself.

Respondents appear content to rest their case upon the decision of the Court of Appeals, and on page 4 of their brief make reference to the cases cited by that court to sustain its opinion. In our petition for certiorari, at pages

19 and 20, we distinguished the cases of *Chicago I. & L. R. Co.* v. *Hackett*, 228 U. S. 559, 57 L. Ed. 966 (1913), and *Security Savings Bank* v. *Connell*, 198 Iowa 564, 200 N. W. 8 (1924). The Court of Appeals also cited *McDonald* v. *Mabee*, 243 U. S. 90, 61 L. Ed. 608 (1917), and *Norton* v. *Shelby County*, 118 U. S. 425, 30 L. Ed. 178 (1886). Neither of these cases touches upon the proposition involved here. The remaining case cited by the Court of Appeals is *Servonitz* v. *State*, 133 Wis. 231, 113 N. W. 277 (1907), which merely holds that a convicted prisoner may by *habeas corpus* proceedings test the constitutionality of the statute for violation of which he was convicted. The reason behind this rule is stated by Mr. Justice Bradley in Ex Parte *Siebold*, 100 U. S. 376, 25 L. Ed. 717, 719 (1880):

> "But personal liberty is of so great moment in the eye of the law that the judgment of an inferior court affecting it is not deemed so conclusive but that, as we have seen, the question of the court's authority to try and imprison the party may be reviewed on *habeas corpus* by a superior court or judge having authority to award the writ."

It is only in unusual circumstances that the writ is allowed, and we do not believe that this situation is comparable to the one presented in the case at bar. It should be noted that respondents have been unable to point out any case in which a litigant has been allowed to go behind a prior judgment in a case of this nature. In our main brief we have called the court's attention to a number of decisions where this court and others have refused to allow such procedure.

Respondents apparently treat with contempt any suggestion that an unconstitutional act could affect their rights or liabilities in any manner. We submit, however, that their

predicament is of their own making. They have allowed themselves to get in the same position as did the respondents in the case of *Reed* v. *Allen*, 286 U. S. 191, 52 S. Ct. 532, 76 L. Ed. 1054 (1932), cited on page 13 of our main brief. Their path was clearly marked out for them. Had they resorted to the simple expedient of an appeal from the prior judgment, this case would never have arisen. Why, for the sole benefit of the respondents here, should this court make an exception to the long-established doctrine of *res judicata*?

The doctrine applies to questions of law as well as questions of fact.

> *United States* v. *Mosely*, 266 U. S. 236, 242, 69 L. Ed. 262, 264 (1924).

It should be cordially regarded and enforced by the courts to the end that rights once established by final judgment shall be recognized by those who are bound by it.

> *Hart Steel Co.* v. *Railroad Supply Co.*, 244 U. S. 294, 299; 61 L. Ed. 1149, 1153 (1917).

> "An adjudication as to constitutionality of a law upon which a claim or cause of action is based is *res judicata* so far as that claim or cause of action is concerned, even though in another case in a higher court the law is adjudged constitutional. * * * So far as the rights determined in an action depend upon the constitutionality of a particular law, the judgment is conclusive with respect to those rights in any subsequent action, except as the issue of constitutionality may be affected by changed conditions." Freeman on Judgments, Fifth Edition, Section 711, pages 1499, 1500.

The same authority makes the following statement in Section 710, page 1498:

> "Questions of jurisdiction may become *res judicata* the same as any other matters of law or fact where they are properly in issue or are necessarily involved and determined."

The only authority cited by respondents to support their position in this case is part of a quotation from 11 American Jurisprudence, set out on page 5 of respondents' brief, as follows:

> "A judgment of any court which is based on an unconstitutional law—it has been said—has no legitimate basis at all and is not to be treated as a judgment of a competent tribune."

This statement itself is qualified and is of doubtful authority. In support thereof the text cites the Connell case and the Servonitz case. These cases have already been distinguished. The text, therefore, has nothing to support it.

The Court of Appeals in its opinion referred to Black on Judgments, Volume 1, Section 216, and apparently placed some reliance upon the statement contained therein. We again state that the rule as set out therein may be correct as a general proposition, but the general rule does not cover a situation such as this one. We believe the following quotation is more applicable to this case:

> "The fact that its own jurisdiction may become a matter in issue before the court, or a question which it must determine before proceeding with the case, and then its decision that it has jurisdiction is generally considered final and conclusive in all collateral inquiries. When the jurisdiction of a court depends upon a fact which it is required to ascertain in its decision, such decision is binding until reversed in a direct proceeding." Black on Judgments, Section 274.

We are unable to think of any substantial reason why the doctrine of *res judicata* should not apply in this case. Throughout the course of this litigation no such reason has been advanced as to why the rule should not apply.

Congress attempted to confer jurisdiction upon the district courts. Congress had the right and the power to confer such jurisdiction, and it was only through inadvertence that Congress did not accomplish its purpose. The Federal District Court certainly had the right and the power to pass upon its own jurisdiction in this case. Questions of jurisdiction, like all other questions of law and fact arising in litigation, must be adjudicated somewhere, and it is equally essential that such adjudication possess the quality of finality and conclusiveness. Whenever a court, whether inferior or superior, trial or appellate, is given the power to entertain such questions, we know of no valid reason why its adjudication should not be conclusive as against either persons or things over whom the court's authority has been extended. Some court must be given the authority to finally and conclusively adjudicate the question. The respondents argue here that the trial court's adjudication of its own jurisdiction is not conclusive. Yet they went back to the very same court which rendered that adjudication and asked that it make a second adjudication holding that its first decision was void. Why should this second adjudication be entitled to any greater respect than the first? We submit that it is entitled to no greater respect, and that the first adjudication is binding upon it and upon these respondents.

It is true that between these two adjudications by the district court there intervened a decision by this court,

to-wit, the Ashton case. This, however, should have no bearing on the issue. We are concerned here not with right decision, but with the right to decide. So far as this case is concerned, it should be decided without reference to the decision in the Ashton case.

Any other rule leaves the question of jurisdiction incapable of final adjudication except as to those persons who have actually subsequently litigated it. The mischiefs which may result from such a situation are obvious especially where, as here, the original adjudication was one *in rem*. In such cases the question of jurisdiction could never become *res judicata*, and would be conclusive only as a result of other proceedings *in personam*, and even then binding only on the parties to such an action and their privies.

This is a typical case of invoking a judgment settling the construction of a written instrument—the first municipal bankruptcy act. There was a sufficient degree of uncertainty in the instrument to call for judicial construction. The question was a narrow one. The district court by its judgment settled this question. There was no appeal. The respondents then returned to that same district court, and in a separate suit asked that court to reexamine the merits of its prior judgment and to render a new judgment inconsistent with its prior decree. The district court did this and in so doing, we submit, the court violated one of the basic principles of the law, "not a mere matter of practice or procedure * * * a rule of fundamental and substantial jus-

tice, 'of public policy and private peace,' which should be cordially regarded and enforced by the courts * * *."

Hart Steel Co. v. *Railroad Supply Co.*, 244 U. S. 294, 299; 61 L. Ed. 1149, 1153 (1917).

Respectfully submitted,

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IN THE

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No. 122

CHICOT COUNTY DRAINAGE DISTRICT ..... *Petitioner*

v.

THE BAXTER STATE BANK and
MRS. LENA S. SHIELDS ..... *Respondents*

RESPONSE TO PETITION FOR CERTIORARI

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INDEX

Subject Index

Table of Cases Cited

IN THE

Supreme Court of The United States

OCTOBER TERM, 1938

No.....

CHICOT COUNTY DRAINAGE DISTRICT.....*Petitioner*

v.

THE BAXTER STATE BANK and

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RESPONSE TO PETITION FOR CERTIORARI

Respondents, by their attorneys respectfully contend that the petition for certiorari should be denied for the following reasons:

(1) The issue presented is not of sufficient public interest or importance to bring it within the purview of Rule 38 of the rules of this Court.

(2) The Court below did not err in holding that the decree entered March 28, 1936, by the District Court was

not binding upon these respondents. The Act of Congress upon which it was based is unconstitutional. The Court had not power to issue process against these respondents. They did not appear either in person or by attorney. They were not before the Court either actually or constructively.

(3) Petitioner now presents to this Court theories, arguments and decisions that were not presented to nor considered by the Courts below.

WHEREFORE, respondents respectfully pray that the petition be denied.

THE BAXTER STATE BANK and
MRS. LENA S. SHIELDS,

By.....

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Little Rock, Arkansas,
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IN THE

Supreme Court of the United States

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BRIEF AND ARGUMENT

Respondents present the different points advanced in the order in which they appear in their response.

I.

THE ISSUE PRESENTED IS NOT OF SUFFICIENT PUBLIC INTEREST OR IMPORTANCE TO BRING IT WITHIN THE PURVIEW OF RULE 38 OF THE RULES OF THIS COURT.

Paragraph 5 of Rule 38 of this Court is as follows:

"A review on writ of certiorari is not a matter of

right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor." • • •

This Court will grant the writ: (1) To secure uniformity; (2) to consider questions of importance to the public.

Petitioner alleges the issue decided against it below is important, but its importance to the public does not appear. Its interest is to reverse, if possible, the judgment below and discharge its obligations by paying a part of the amount due. Respondents are interested in being able to realize in full on contracts purchased in good faith. These parties only are interested.

Petitioner states that during the time between the passage of the first Municipal Bankruptcy Act and the date it was declared unconstitutional "there were undoubtedly a great number of cases instituted by improvement districts for the purpose of effecting a composition of debt." This is based only upon speculation and conjecture.

When a sufficient number of creditors had signed to make the alleged Act apparently operative and other parties, though not consenting in the beginning, then came in and surrendered their bonds, not one of them at this time may be affected by this decision. Since all parties ultimately consented to discount their bonds, it became a matter of contract and could have been fully consummated without any act of congress.

The only ground upon which petitioner seeks to invoke

the power of this Court to grant certiorari is that of public interest. As a basis for this Court's jurisdiction it cites three cases on Page 5 of its petition. In *National Labor Relations Bd.* v. *Mackay Radio & Teleg. Co.*, 304 U. S. 333, 58 S. Ct. 904, 82 L. Ed. 1381, this Court granted certiorari on the ground of conflict in decisions. This is true in *Gay* v. *Ruff*, 292 U. S. 25, 30; 78 L. Ed. 1098, 1104 (1933). From the other case cited by petitioner, *Magnum Import Co.* v. *Coty*, 262 U. S. 159; 43 S. Ct. 531, 67 L. Ed. 922, we quote as follows:

> "The jurisdiction to bring up cases by certiorari from the circuit courts of appeals was given for two reasons: first, to secure uniformity of decision between those courts in the nine circuits; and, second, to bring up cases involving questions of importance which it is in the public interest to have decided by this court of last resort. The jurisdiction was not conferred upon this court merely to give the defeated party in the circuit court of appeals another hearing." • • •

II.

THE COURT DID NOT ERR IN HOLDING THAT RESPONDENTS WERE NOT BOUND BY AN UNCONSTITUTIONAL ACT.

The decision by the Circuit Court of Appeals appears Record 97. Authorities cited clearly support it.

Petitioner argues that respondents should have raised the question of the constitutionality of the Act, and failing to do so, then failing to appeal, are bound by the decree.

They were not in court in person nor by attorney (R. 98). There was no duty to respond to process issued under an unconstitutional Act. They were not in court, actually or constructively.

The unconstitutional Act was a nullity. *C. I. & L. R. Co.* v. *Hackett*, 228 U. S. 557.

From 11 American Jurisprudence (Constitutional Law, sub-head, "Effect of Unconstitutional Statutes," sec. 148), we quote:

> "Since unconstitutional law is void, the general principles follow that it imposes no duties, confers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. No one is bound to obey an unconstitutional law and no courts are bound to enforce it because only the valid legislative intent becomes the law to be enforced by the courts."

III.

PETITIONER PRESENTS THEORIES, ARGUMENTS AND DECISIONS THAT WERE NOT PRESENTED TO NOR CONSIDERED BY THE COURTS BELOW.

The suggestion that had the Ashton case been appealed from Arkansas the decision may have been different is very far-fetched and highly speculative, an after-thought on the part of petitioner—a theory not presented to the District Court nor to the Court of Appeals, and none of

the cases cited by petitioner was cited in its brief in the Court of Appeals.

It is not anticipated that this Court at this time will review the Ashton case with a view of deciding whether the first Municipal Bankruptcy Act unauthorized by the Constitution of the United States as applied to other States might be constitutional in the State of Arkansas.

It is respectfully submitted that the petition should be denied.

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IN THE

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OCTOBER TERM, 1939

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BRIEF FOR RESPONDENTS

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INDEX

TABLE OF CASES CITED

TEXTS CITED

OPINIONS CITED

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

CHICOT COUNTY DRAINAGE DISTRICT ..... *Petitioner*

v. No. 122

THE BAXTER STATE BANK AND
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BRIEF FOR RESPONDENTS

Respondents will present their contention under three heads:

1. The provisions of an unconstitutional act may be disregarded.
2. The first Municipal Bankruptcy Act was declared unconstitutional and the decision has not been overruled or modified.
3. Did the unconstitutional act give the court jurisdiction either of the subject matter or the parties?

THE PROVISIONS OF AN UNCONSTITUTIONAL ACT MAY BE DISREGARDED

This case was decided by the United States Circuit Court of Appeals, Eighth Circuit, on April 29, 1939. From the opinion of that Court we quote the second paragraph, which reflects the facts:

"The bankruptcy proceedings referred to were initiated on June 17, 1935, by filing in the United States District Court for the Eastern District of Arkansas, a petition for authority to effect a plan of debt readjustment, pursuant to amendments to the Bankruptcy Act, adopted May 24, 1934, and designated as U. S. C. A. Title 14, Sections 301, 302 and 303. No question is raised as to the regularity of these proceedings as prescribed by the Act. Plaintiffs were made parties to said proceedings by publication of a notice thereof pursuant to order of the bankruptcy court, and by mailing to them personally a notice of said proceedings, which notice was received by each of them, but neither of them appeared therein either in person or by attorney."

In addition to these facts, it is noted that the final decree in the original action in the District Court in Bankruptcy was entered March 28, 1936 (R. 49). The decision in *Ashton* v. *Cameron County Water Improvement District*, 298 U. S. 513, declaring unconstitutional the Act of Congress upon which the action was based, was rendered May 25, 1936.

This final decree provides (R. 52) that all obligations against the District must be presented within one year from the date of the decree. That is, they should be presented not later than March 28, 1937.

This decree provides also that all outstanding bonds on the final date fixed were "cancelled, annulled and held for naught as enforceable obligations of the petitioning district," (R. 52) "and that the holders thereof be and they are hereby forever restrained and enjoined from otherwise asserting any claim or demand whatsoever therefor as against the petitioning district or its officers, or

against the property situated therein or the owners thereof." (R. 52).

If this decree is upheld, respondents are guilty of contempt of court in bringing the present action in violation of this injunction. While respondents may have some contempt for an unconstitutional act, they have none for the court, and have no fear for citation for violation of the terms of a decree based upon an act, declared to be unconstitutional before that decree became finally consummated.

The only question before this Court is, May the respondents be forced to surrender the bonds of the Drainage District held by them for an amount less than that provided in the Contract?

All the authorities cited by petitioner in an attempted support of its theory that the decision of the District Court before the act was declared unconstitutional may be res judicata as to this suit are based on facts different from those involved in the instant case.

In the instant case the constitutionality of the act of Congress, referred to as the first Municipal Bankruptcy Act, was not raised. These respondents were not in court either in person or by attorney. It is true they were served as provided by said act, but it is also true that such service, based on an unconstitutional act, was a mere nullity. Both the District Court and the Court of Appeals held the act, being unconstitutional, was void and no action could be taken thereon depriving these respondents of their contractual rights.

Sustaining its conclusions, the Court of Appeals cites many decisions of this Court and we see no occasion to make further reference to them as there is no effort on the part of petitioner to discuss these cases. No contention is made that they do not sustain the conclusions reached by the Court of Appeals. However, for this Court's convenience, we set them out as follows:

McDonald v. *Mabee*, 243 U. S. 90;

Chicago, I. & L. R. Co. v. *Hackett*, 228 U. S. 559;

Norton v. *Shelby Co.*, 118 U. S. 425;

Security Savings Bank v. *Connell* (Ia.) 200 N. W. 8;

Servonitz v. *State* (Wis.) 113 N. W. 277;

Black on Judgments, Sec. 216.

To these we add the following:

Freeman on Judgments (5th Ed.) Vol. 1, p. 733;

Metzger Motor Car Co. v. *Parrott*, 233 U. S. 36;

American Jurisprudence, Vol. 11

And we quote from the subject of *Constitutional Law*, 11 *American Jurisprudence, sub-head*, "Effect of Unconstitutional Statutes," Section 148:

> "The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void, and in legal contemplation is as inoperative as if it had never been passed. Such a statute leaves the question that it purports to settle just as it would be had the statute not been enacted. Moreover, a construction of a statute which brings it in conflict with the Constitution will nullify it as effectually as if it had, in express terms, been enacted in conflict therewith.
>
> "Since an unconstitutional law is void, the general principles follow that it imposes no duties, con-

fers no rights, creates no office, bestows no power or authority on anyone, affords no protection, and justifies no acts performed under it. No one is bound to obey an unconstitutional law and no courts are bound to enforce it because only the valid legislative intent becomes the law to be enforced by the courts.

"A void act cannot be legally inconsistent with a valid one. Moreover, an unconstitutional law cannot operate to supersede any existing valid law. Accordingly, where a clause repealing a prior law is inserted in an act, which act is unconstitutional and void, the provisions for the repeal of the prior law will usually fall with it and will not be permitted to operate as repealing such prior law. A judgment of any court which is based on an unconstitutional law—it has been said—has no legitimate basis at all and is not to be treated as a judgment of a competent tribunal. Furthermore, courts of other states are not required to give to it the full faith and credit commanded by the provisions of the United States Constitution as to the public acts, records and judicial proceedings of other states.

"A contract which rests on an unconstitutional statute is void and creates no obligation to be impaired by subsequent legislation.

"These general principles apply to the Constitutions as well as to the laws of the several states in so far as they are repugnant to the Constitution and laws of the United States."

Among the numerous citations given in support of the above statement of the law are more than twenty from this Court.

Petitioner contends that the case culminating in the decree of March 28, 1936, was between the same parties and involved the same issues as presented in the case at bar. Respondents contend that steps taken under an un-

constitutional act are void and especially is this true as to one who was not in court nor represented.

Petitioner contends also that the decree of the District Court is not "wholly void" but does not set out to just what extent or degree it is void. A decree, based upon an unconstitutional act, may not be partly void and partly valid. If it were void, it was void—this does not permit of degrees.

If the question of jurisdiction is one of law, the court cannot acquire it; if one of fact, its findings would be effective. 15 C.J. 854. Petitioner cites *Ashton* v. *Cameron County Water Improvement District*, 298 U. S. 513, holding the first Municipal Bankruptcy Act unconstitutional, and *Lindsay-Strathmore Irrigation District* v. *Bekins, et al*, 304 U. S. 27, holding the second Municipal Bankruptcy Act constitutional, then suggests that the method of service in the original act being the same as in the second act, these respondents were in court under the original service. This is rather a strange contention. Under the Ashton case, *supra*, the first act was held unconstitutional because, by its terms, it included political divisions of states. The Ashton case was based on a Water Improvement District, just as the instant case is one on a Drainage Improvement District. Neither of them is a political subdivision of the state in its strict sense, but there is no difference in the status.

It is not what may have been done under the act but the power given that is the test of its constitutionality.

It is contended by petitioner there is no material difference between the first and the second acts. There is a

very substantial difference in that from the second there were omitted all those provisions rendering the first act unconstitutional.

Rule In Arkansas

In the case of *Rankin* v. *Schofield*, 81 Ark. 463, the court quotes approvingly from *Freeman on Judgments* as follows:

> "A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. It neither binds nor bars any one. All acts performed under it and all acts flowing out of it are void. The parties attempting to enforce it may be responsible as trespassers."

and cites also *Townsley-Myrick Dry Goods Co.* v. *Fuller*, 58 Ark. 186.

In *Pitcock* v. *State*, 91 Ark. 534, the court again quotes approvingly from *Freeman on Judgments*, as above, cites also *Rankin* v. *Schofield*, 81 Ark. 463, and goes on to say:

> "On the other hand, a court possesses the power of hearing and determining the question of its jurisdiction, and may, while so doing, require the parties to preserve the status of the subject-matter. *United States* v. *Arredondo*, 6 Pet. 709; *United States* v. *Shipp*, 203 U. S. 563. However, when the pleadings show on their face that the court is wholly without jurisdiction of the subject-matter set forth therein, any preliminary order made or final judgment rendered is void. *Williford* v. *State*, 43 Ark. 62."

Petitioner based its original action on the first Municipal Bankruptcy Act, May 21, 1934 (R. 17) subsequently declared unconstitutional. This petition on its face reflected a lack of jurisdiction.

The decisions of the Arkansas Supreme Court are controlling. *Erie Ry. Co.* v. *Tompkins*, 304 U. S. 64, 82 L. Ed. 1188.

2

THE FIRST MUNICIPAL BANKRUPTCY ACT WAS DECLARED UNCONSTITUTIONAL AND THAT DECISION HAS NOT BEEN OVERRULED NOR MODIFIED

This case was tried both in the District Court and in the Circuit Court of Appeals on the theory that the First Municipal Bankruptcy Act was unconstitutional. For the first time petitioner now raises the question of the constitutionality of the act in the State of Arkansas in its petition for certiorari, citing the case of *Drainage District No. 7 of Poinsett County* v. *Hutchins*, 184 Ark. 521, holding that a drainage district is not such a political subdivision of the state and might be made a defendant in its courts. It is argued then that if the Ashton case had arisen in Arkansas, on appeal it would have been held constitutional.

The Constitution of the United States is a limitation upon Congress. When the Supreme Court of the United States holds an act unconstitutional it applies to all states alike. Under petitioner's theory it would seem that before such a question could be finally settled as to local effect appeals would be necessary from each state.

A drainage district in Arkansas has the same status as a water improvement district in Texas. This Court did not hold the first Municipal Bankruptcy Act unconstitutional because the water improvement district of

Texas was a subdivision of the government but because the original act provided that political subdivisions of the states might be adjudged bankrupts.

As stated in the opinion in the Ashton case, *supra*, the test of constitutionality is not what has been done under an act but what may be done—the power that is given under the act.

We emphasize the fact that the decision of this Court in *Lindsay-Strathmore Irrigation District* v. *Bekins*, et al, 304 U. S. 27, holding the second Municipal Bankruptcy Act constitutional, in no way overrules or modifies the decision in the Ashton case, *supra*, but bases its conclusions upon amendments made by Congress eliminating political subdivisions of the state.

3

DID THE UNCONSTITUTIONAL ACT GIVE THE COURT JURISDICTION EITHER OF THE SUBJECT MATTER OR THE PARTIES

It is contended by petitioner that the court had jurisdiction of the subject matter because it has general jurisdiction in matters of bankruptcy, but this unconstitutional act contained the following provision:

> "Until January 1, 1940, in *addition* (italics ours) to the jurisdiction exercised in voluntary and involuntary proceedings to adjudge persons bankrupt, courts of bankruptcy shall exercise original jurisdiction in proceedings for the relief of debtors, as provided in this chapter of this title."

The additional jurisdiction attempted to be extended rendered the act unconstitutional. The court having juris-

diction generally of bankruptcy could not exercise the additional jurisdiction extended in that act.

A defendant might respond to a summons under an unconstitutional act, raise the question of constitutionality and then it might become incumbent upon him to appeal from an adverse ruling, but we emphasize the fact that in the instant case the respondents were never in court either in person or by attorney. Even if they had been, an appeal would have been vain and unnecessary as the act upon which the proceeding in the District Court was based was declared unconstitutional before the decree of that Court became fully effective and before the time for appeal had expired, final decree having been entered March 28, 1936 (R. 49).

We respectfully submit that the decision of the Court of Appeals should be affirmed.

Respectfully submitted,

ARTHUR J. JOHNSON

G. W. HENDRICKS

Counsel for Respondents

FILE COPY.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1939

CHICOT COUNTY DRAINAGE DISTRICT.....*Petitioner*

v. No. 122

THE BAXTER STATE BANK AND
MRS. LENA S. SHIELDS.....*Respondents*

PETITION FOR REHEARING

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PARAGON PRINTING CO., LITTLE ROCK

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MRS. LENA S. SHIELDS.....*Respondents*

PETITION FOR REHEARING

Come respondents and herewith petition this Court for a rehearing as follows:

The effect of the decision of the Court in this case is that a court assuming to function under an unconstitutional act has power to function to such extent that respondents, although summoned into court under process specially provided by such act and failing to appear, are bound by the proceeding and cannot attack collaterally. Respondents respectfully present that, in reaching this conclusion, the Court has evidently confused this case, where the court was undertaking to function under an unconstitutional act and with authority attempted to be extended by such act—authority and power it did not have in the absence of such act—with cases in which there was no question as to the constitutionality of the act conferring authority, but the question of the court's jurisidiction arising subsequently and on other grounds. We have this impression because

this Court, since the case of *Marbury* v. *Madison*, in 1803, has held in many cases that all proceedings under an unconstitutional act are void. The Court quotes from some of those cases with the statement it is not willing at this time to accept the broad statements therein without qualification. This qualification seems to be in effect a conferring on a court the power to function under an unconstitutional act. The Constitution limits the power of Congress and Congress provides the jurisdiction of courts. There is no other source by which power to act may be conferred, and if the act under which the court assumes to function is unconstitutional, it is interesting to know from what source such power may be conferred. It certainly cannot be judicially conferred and there is no provision of the Constitution to the effect that a court may function under an unconstitutional act up to the time it is declared to be unconstitutional. It appears that the effect of this decision is, there is no limitation on Congress up to the time the courts have declared the act unconstitutional. It seems that any act would be constitutional as to those who have acted under it or those who failed to act after having been served with notice under its terms, but would be unconstitutional as to all other persons.

Respondents' impression that the Court had confused this issue is based on the fact that all its decisions heretofore are to the effect that a court can not function under an unconstitutional act, but this decision is to the effect that its decrees, although based on an unconstitutional act, may not be collaterally attacked, and, in support of this decision, cites decisions in none of which was the question of the unconstitutionality of an act involved. No cases cited by pe-

titioner or in the opinion involve the power of a court to function under an unconstitutional act, but all those decisions are based on other questions of jurisdiction.

In the case of *Stoll* v. *Gottlieb*, 305 Ark. 165, cited by the Court in support of its conclusion, there was no question of the constitutionality of an act involved. The question was the power of the court to cancel a personal guarantee. Defendants appeared, the issue was raised and the court decided it had jurisdiction. Subsequently the Supreme Court of the State held that the Federal District Court did not have jurisdiction. The effect of that decision seems to be that as the parties having appeared and the question of jurisdiction having been raised and decided and no appeal taken, the State Court had no power to review the same question and enforce a different conclusion.

We see no occasion to review the other cases cited by the Court. There is no disposition to contend that these decisions are not wholesome but it is contended that in not a single one of them is involved the question of the constitutionality of the act under which the court was functioning.

We quote from the decision of this Court in the instant case: "But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act. Their determinations of such questions, while open to direct review, may not be assailed collaterally."

Apparently, in making that statement this Court assumes that the court below had authority, but respondents contend there was no authority because the act by which authority was attempted to be conferred was unconstitutional. It seems to be assumed also that respondents were brought into court under requirements of due process. How could this be when the process served on respondents was a special process provided by an unconstitutional act? There would be better reason for the Court's conclusions if the act had provided service of process the courts have general power to issue.

The decision states that respondents were not privileged to remain quiet and raise the question of constitutionality in a subsequent suit. It may be the impression of the Court that respondents did not act in good faith but intentionally waited until others had agreed to take 36c on the $1.00 for their bonds and then attempt to take advantage of the unconstitutionality of the act in an effort to secure full payment of bonds.

Facts reflected by the record are interesting: The instant case was heard in the Federal District Court less than two years after the Drainage District was reorganized. To be exact, it was one year, nine months and twenty-three days. At the trial of the instant case the secretary of the District testified there had been collected and paid on the new bonds $110,500 (Printed Record p. 81). In addition to this the costs of the proceeding had been paid. The entire maturities under the original issue up to this time amounted to only $122,000 (Printed Record p. 76) and the amounts paid during this short period enabled the District

to anticipate its maturities on the new issue up to and including 1958 (Printed Record pp. 62-63). This is the Drainage District that claimed to be insolvent.

Respondents discovered that real financial condition of the District and, since the act had been declared unconstitutional, insisted on the payment of their bonds. They contend their property may be taken from them only with their consent or by due process of law. They did not consent and due process may not be founded on an unconstitutional act.

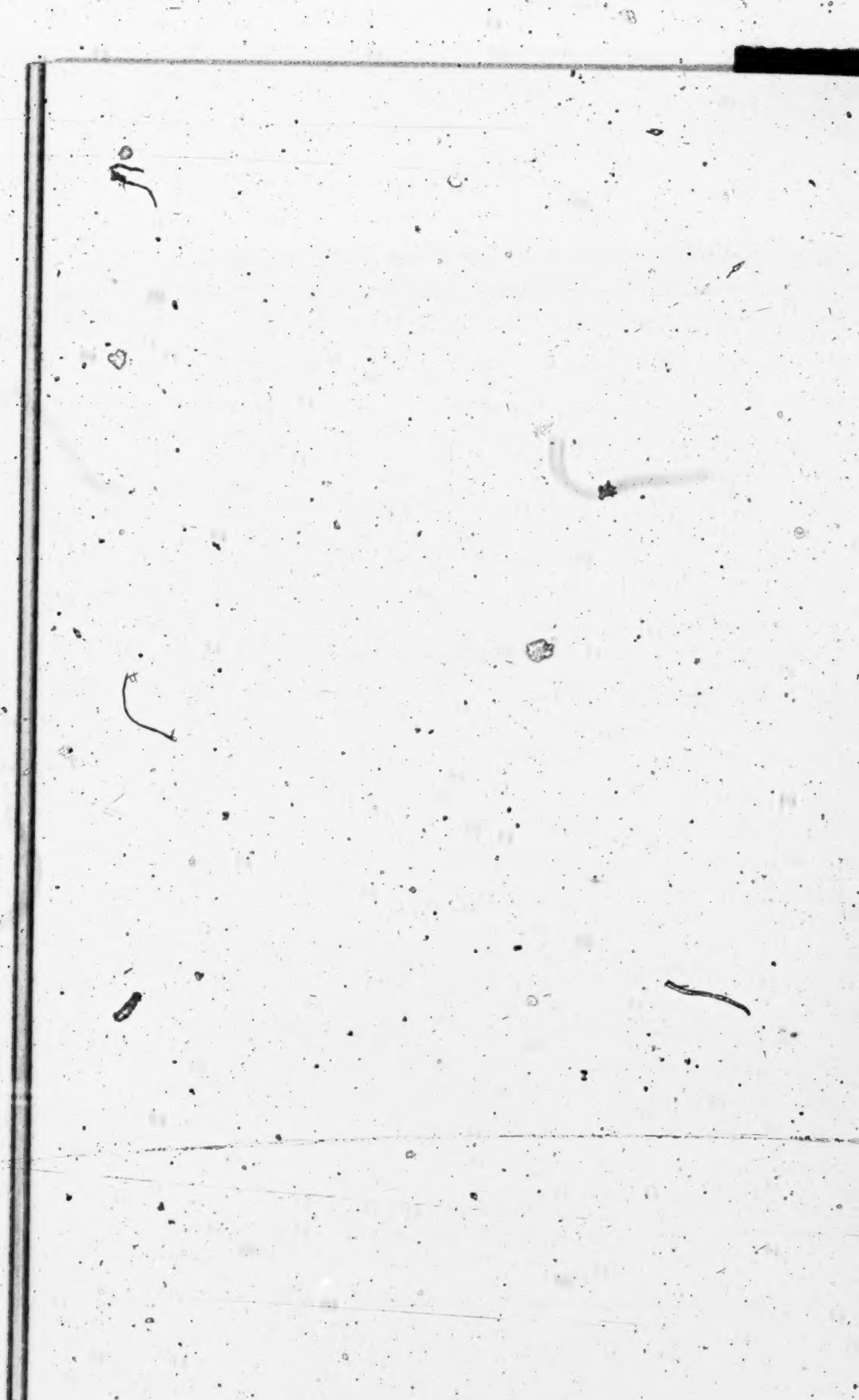
It is respectfully submitted there should be a rehearing in this case and a judgment entered affirming the decision of the court below.

ARTHUR J. JOHNSON,
Star City, Arkansas
G. W. HENDRICKS,
Litfle Rock, Arkansas
Counsel for Respondents

CERTIFICATE

I, G. W. Hendricks, attorney for respondents, certify that the above petition is filed in good faith and not for the purpose of delay.

G. W. HENDRICKS,
Attorney for Respondents



SUPREME COURT OF THE UNITED STATES.

No 122.—October Term, 1939.

Chicot County Drainage District, Petitioner, vs. The Baxter State Bank and Mrs. Lena S. Shields.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[January 2, 1940.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

Respondents brought this suit in the United States District Court for the Western Division of the Eastern District of Arkansas to recover on fourteen bonds of $1,000 each, which had been issued in 1924 by the petitioner, Chicot County Drainage District, organized under statutes of Arkansas,[1] and had been in default since 1932.

In its answer, petitioner pleaded a decree of the same District Court in a proceeding instituted by petitioner to effect a plan of readjustment of its indebtedness under the Act of May 24, 1934,[2] providing for "Municipal-Debt Readjustments". The decree recited that a plan of readjustment had been accepted by the holders of more than two-thirds of the outstanding indebtedness and was fair and equitable; that to consummate the plan and with the approval of the court petitioner had issued and sold new serial bonds to the Reconstruction Finance Corporation in the amount of $193,500 and that these new bonds were valid obligations; that, also with the approval of the court, the Reconstruction Finance Corporation had purchased outstanding obligations of petitioner to the amount of $705,087.06 which had been delivered in exchange for new bonds and canceled; that certain proceeds had been turned over to the clerk of the court and that the disbursing agent had filed

[1] Act No. 405, Extra. Sess., General Assembly of Arkansas, approved February 20, 1920, as amended by Act No. 432 of 1921, and General Drainage Law of Arkansas, approved May 27, 1909.

[2] 48 Stat. 798. Originally this provision was limited to two years but it was extended to January 1, 1940, by Act approved April 10, 1936, 49 Stat. 1198.

his report showing that the Reconstruction Finance Corporation had purchased all the old bonds of petitioner other than the amount of $57,449.30. The decree provided for the application of the amount paid into court to the remaining old obligations of petitioner, that such obligations might be presented within one year, and that unless so presented they should be forever barred from participating in the plan of readjustment or in the fund paid into court. Except for the provision for such presentation, the decree canceled the old bonds and the holders were enjoined from thereafter asserting any claim thereon.

Petitioner pleaded this decree, which was entered in March, 1936, as *res judicata*. Respondents demurred to the answer. Thereupon the parties stipulated for trial without a jury.

The evidence showed respondents' ownership of the bonds in suit and that respondents had notice of the proceeding for debt readjustment. The record of that proceeding, including the final decree, was introduced. The District Court ruled in favor of respondents and the Circuit Court of Appeals affirmed. 103 F. (2d) 847. The decision was placed upon the ground that the decree was void because, subsequent to its entry, this Court in a proceeding relating to a municipal district in Texas had declared the statute under which the District Court had acted to be unconstitutional. *Ashton* v. *Cameron County District*, 298 U. S. 513. In view of the importance of the question we granted certiorari. October 9, 1939.

The courts below have proceeded on the theory that the Act of Congress, having been found to be unconstitutional, was not a law; that it was inoperative, conferring no rights and imposing no duties, and hence affording no basis for the challenged decree. *Norton* v. *Shelby County*, 118 U. S. 425, 442; *Chicago, Indianapolis & Louisville Rwy. Co.* v. *Hackett*, 228 U. S. 559, 566. It is quite clear, however, that such broad statements as to the effect of a determination of unconstitutionality must be taken with qualifications. The actual existence of a statute, prior to such a determination, is an operative fact and may have consequences which cannot justly be ignored. The past cannot always be erased by a new judicial declaration. The effect of the subsequent ruling as to invalidity may have to be considered in various aspects,—with respect to particular relations, individual and corporate, and particular conduct, private and official. Questions of rights claimed to have become vested, of status, of prior determinations deemed to have

finality and acted upon accordingly, of public policy in the light of the nature both of the statute and of its previous application, demand examination. These questions are among the most difficult of those which have engaged the attention of courts, state and federal, and it is manifest from numerous decisions that an all-inclusive statement of a principle of absolute retroactive invalidity cannot be justified.[3] Without attempting to review the different classes of cases in which the consequences of a ruling against validity have been determined in relation to the particular circumstances of past transactions, we appropriately confine our consideration to the question of *res judicata* as it now comes before us.

First. Apart from the contention as to the effect of the later decision as to constitutionality, all the elements necessary to constitute the defense of *res judicata* are present. It appears that the proceedings in the District Court to bring about a plan of readjustment were conducted in complete conformity to the statute. The Circuit Court of Appeals observed that no question had been raised as to the regularity of the court's action. The answer in the present suit alleged that the plaintiffs (respondents here) had notice of the proceeding and were parties, and the evidence was to the same effect, showing compliance with the statute in that respect. As parties, these bondholders had full opportunity to present any objections to the proceeding, not only as to its regularity, or the fairness of the proposed plan of readjustment, or the propriety of the terms of the decree, but also as to the validity of the statute under which the proceeding was brought and the plan put into effect. Apparently no question of validity was raised and the cause proceeded to decree on the assumption by all parties and the court itself that the statute was valid. There was no attempt to review the decree. If the general principles governing the defense of *res judicata* are applicable, these bondholders, having the opportunity to raise the question of invalidity, were not the less bound by the decree because they failed to raise it. *Cromwell* v. *County of Sac*, 94 U. S. 351, 352; *Case* v. *Beauregard*, 101 U. S. 688, 692; *Baltimore Steamship Co.* v. *Phillips*, 274 U. S. 316, 319, 325; *Grubb* v. *Public Utilities Commission*, 281 U. S. 470, 479.

Second. The argument is pressed that the District Court was sitting as a court of bankruptcy, with the limited jurisdiction con-

[3] See Field, "The Effect of an Unconstitutional Statute"; 42 Yale Law Journal 779; 45 Yale Law Journal 1533; 48 Harvard Law Review 1271; 25 Virginia Law Review 210.

ferred by statute, and that, as the statute was later declared to be invalid, the District Court was without jurisdiction to entertain the proceeding and hence its decree is open to collateral attack. We think the argument untenable. The lower federal courts are all courts of limited jurisdiction, that is, with only the jurisdiction which Congress has prescribed. But none the less they are courts with authority, when parties are brought before them in accordance with the requirements of due process, to determine whether or not they have jurisdiction to entertain the cause and for this purpose to construe and apply the statute under which they are asked to act. Their determinations of such questions, while open to direct review, may not be assailed collaterally.

In the early case of *M'Cormick* v. *Sullivant*, 10 Wheat. 192, where it was contended that the decree of the federal district court did not show that the parties to the proceedings were citizens of different States and hence that the suit was *coram non judice* and the decree void, this Court said: "But this reason proceeds upon an incorrect view of the character and jurisdiction of the inferior Courts of the United States. They are all of limited jurisdiction; but they are not, on that account, inferior Courts, in the technical sense of those words, whose judgments, taken alone, are to be disregarded. If the jurisdiction be not alleged in the proceedings, their judgments and decrees are erroneous, and may, upon a writ of error, or appeal, be reversed for that cause. But they are not absolute nullities". *Id.*, p. 199. See, also, *Skillern's Executors* v. *May's Executors*, 6 Cranch 267; *Des Moines Navigation Co.* v. *Iowa Homestead Co.*, 123 U. S. 552, 557, 559; *Dowell* v. *Applegate*, 152 U. S. 327, 340; *Evers* v. *Watson*, 156 U. S. 527, 533; *Cutler* v. *Huston*, 158 U. S. 423, 430, 431. This rule applies equally to the decrees of the District Court sitting in bankruptcy, that is, purporting to act under a statute of Congress passed in the exercise of the bankruptcy power. The court has the authority to pass upon its own jurisdiction and its decree sustaining jurisdiction against attack, while open to direct review, is *res judicata* in a collateral action. *Stoll* v. *Gottlieb*, 305 U. S. 165, 171, 172.

Whatever the contention as to jurisdiction may be, whether it is that the boundaries of a valid statute have been transgressed, or that the statute itself is invalid, the question of jurisdiction is still one for judicial determination. If the contention is one as to validity, the question is to be considered in the light of the standing of

the party who seeks to raise the question and of its particular application. In the present instance it is suggested that the situation of petitioner, Chicot County Drainage District, is different from that of the municipal district before the court in the *Ashton* case. Petitioner contends that it is not a political subdivision of the State of Arkansas but an agent of the property owners within the District. See *Drainage District No. 7 of Poinsett County* v. *Hutchins*, 184 Ark. 521.[4] We do not refer to that phase of the case as now determinative but merely as illustrating the sort of question which the District Court might have been called upon to resolve had the validity of the Act of Congress in the present application been raised. As the question of validity was one which had to be determined by a judicial decision, if determined at all, no reason appears why it should not be regarded as determinable by the District Court like any other question affecting its jurisdiction. There can be no doubt that if the question of the constitutionality of the statute had actually been raised and decided by the District Court in the proceeding to effect a plan of debt readjustment in accordance with the statute, that determination would have been final save as it was open to direct review upon appeal. *Stoll* v. *Gottlieb*, *supra*.[5]

The remaining question is simply whether respondents having failed to raise the question in the proceeding to which they were parties and in which they could have raised it and had it finally determined, were privileged to remain quiet and raise it in a subsequent suit. Such a view is contrary to the well-settled principle that *res judicata* may be pleaded as a bar, not only as respects matters actually presented to sustain or defeat the right asserted in the earlier proceeding, "but also as respects any other available matter which might have been presented to that end". *Grubb* v. *Public Utilities Commission*, *supra*; *Cromwell* v. *County of Sac*, *supra*.

The judgment is reversed and the cause is remanded to the District Court with direction to dismiss the complaint.

It is so ordered.

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[4] See Drainage District No. 2 of Crittenden County, Ark., v. Mercantile-Commerce Bank, 69 F. (2d) 138; In re Drainage District No. 7 of Poinsett Ark., 21 F. Supp. 798.

[5] See, also, Miller v. Tyler, 58 N. Y. 477, 480; Drinkhard v. Odeh, 150 Ala. 475, 477, 478; Pulaski Avenue, 220 Pa. 276, 279, 280; People v. Russel, 283 Ill. 520, 524; Beck v. State, 196 Wis. 242, 250.